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No. 02-1667

IN THE

Supreme Court of the United States

State of Tennessee,

Petitioner,

v.

George Lane, Beverly Jones, and
United States of America.

On Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

BRIEF FOR THE PRIVATE RESPONDENTS

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STATEMENT

I. The Statutory Scheme

This case involves disabled citizens' basic civil right of access to the state courts of justice. Title II of the Americans with Disabilities Act (ADA) generally prohibits any "public entity"—including state governments—from "subject[ing]" any "qualified individual with a disability" to "discrimination." 42 U.S.C. § 12132. Rather than adopt more detailed statutory provisions to give content to that general prohibition (as it did in Titles I and III of the ADA), Congress directed the Attorney General to flesh out that prohibition by adopting regulations that would incorporate various requirements previously applied under the Rehabilitation Act of 1973. See *id.* § 12134. The Attorney General duly promulgated those regulations, which became effective January 26, 1992, eighteen months after the statute's enactment. See 56 Fed. Reg. 35694 (1991). The basic obligations Title II imposes on states stem from those regulations.

The regulations, as relevant here, impose a requirement of accessibility on state activities. Like the earlier regulations that implemented the Rehabilitation Act of 1973, the Title II regulations governing physical accessibility sharply distinguish between new and existing facilities.[1] For

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[1] See 42 U.S.C. § 12134(b) (directing the Attorney General to follow the Rehabilitation Act regulations in this regard). Title III of the ADA, which covers private places of public accommodation, draws a similar distinction between new construction and existing facilities for accessibility purposes. Compare 42 U.S.C. § 12183(a)(1) (imposing "readily accessible" standard on new construction) with *id.* § 12182(b)(2)(A)(iv) (requiring removal of structural barriers in existing facilities only when doing so is "readily achievable"). Cf. 1 House Comm. on Educ. & Labor, Legislative History of Pub. L. No. 101-336: The Americans with Disabilities Act 357 (1990) (hereinafter 'Leg. Hist.") (House

facilities on which "construction was commenced after January 26, 1992," a stringent standard of accessibility applies: Each such facility must be "readily accessible to and usable by individuals with disabilities," 28 C.F.R. § 35.151(a), and generally must satisfy a detailed set of accessibility guidelines, see *id.* § 35.151(c). The strict standard applied to new construction draws from the relevant Rehabilitation Act regulations, see 28 C.F.R. § 41.58 (1989), and rests on the premise that accessibility features are exceptionally inexpensive when incorporated in a facility's initial design. See 1 Leg. Hist., *supra*, at 187 (Senate comm. report).

For facilities already in existence in 1992, the Title II regulations follow the earlier Rehabilitation Act regulations, see 28 C.F.R. § 39.150 (1989), in taking a more lenient approach. Instead of demanding that *each building* in the state be readily accessible, the existing-facility provisions require only that a state "operate each service, program, or activity so that the service, program, or activity, *when viewed in its entirety*, is readily accessible to and usable by individuals with disabilities." 28 C.F.R. § 35.150(a) (emphasis added). The regulations emphasize that public entities need not "make structural changes in existing facilities where other methods are effective in achieving compliance" with the program accessibility mandate. *Id.* § 35.150(b)(1). Rather, states have a variety of ways of complying with that mandate, including:

> such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any

committee report) (prohibitions imposed by Title II regulations should track those imposed by Titles I and III).

> other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities.

Id. States need not take any action that "would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens." *Id.* § 35.150(a)(3). See also *id.* ("action that would threaten or destroy the historic significance of an historic property" not required).

In recognition of the fact that Title II's mandate might nonetheless require states to make physical alterations to some existing buildings (as we contend were required here), states may take advantage of several provisions that address the need for an orderly transition to compliance. Each public entity, by January 26, 1993, was to "evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and . . . proceed to make the necessary modifications." 28 C.F.R. § 35.105(a). Where "structural changes to facilities" were necessary to achieve compliance, states were to "develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes." *Id.* § 35.150(d)(1). And "[w]here structural changes in facilities are undertaken to comply" with the accessibility requirement, the regulations provided that "such changes shall be made within three years of January 26, 1992, but in any event as expeditiously as possible." *Id.* § 35.150(c). The events that form the basis for this case all occurred more than four years after that January 1992 effective date. See Pet. App. 15-17, 19-20.

II. The Facts

The six named plaintiffs[2] were denied the opportunity to participate effectively in Tennessee court proceedings

[2] Two of these plaintiffs, George Lane and Beverly Jones, were named in the original complaint and are Respondents here.

because the state's courthouses were not physically accessible to individuals with disabilities. In 1996, at roughly the same time as the events underlying this case, the Commission on the Future of the Tennessee Judicial System reported that "[f]or persons with significant physical or mental impairment, the system can be quite literally inaccessible." Comm'n on the Future of the Tenn. Judicial Sys., Final Report 31 (1996). When the original complaint was filed in 1998, plaintiffs identified courthouses in 23 Tennessee counties that were not physically accessible to individuals with mobility disabilities. Pet. App. 22. The experience of the plaintiffs—one of whom was arrested for failure to appear when he refused to crawl up the steps of an inaccessible courthouse to attend a hearing in the criminal case in which he was a defendant—illustrates the consequences of that inaccessibility.

1. George Lane—In September 1996, Respondent George Lane was compelled to appear at the Polk County courthouse to answer a set of criminal charges the state had filed against him. Pet. App. 15. Due to extensive injuries he had suffered in an automobile accident, Lane used a wheelchair for mobility; he could neither walk nor climb stairs. *Id.* 13. Because all proceedings in that courthouse occurred on the second floor, and the building had no elevator, Lane was required to abandon his wheelchair and literally crawl up the steps in order to appear in court. *Id.* at 15. Following his arraignment, Lane was summoned to appear at an October hearing in the same courtroom. *Id.* Lane duly arrived at the courthouse but sent word to the trial

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See Pet. App. 12. After the state took its interlocutory appeal from the denial of the motion to dismiss, the district court granted two separate motions to join the others—Dennis Cantrel, Ann Marie Zappola, Ralph E. Ramsey, Sr., and A. Russell Larson—as party plaintiffs. (Respondents have moved for leave to lodge the motions and court orders.) Because this case arises on a motion to dismiss, allegations in the complaint must of course be taken as true and read in the light most favorable to the plaintiff.

judge that he refused to go through the humiliation of crawling up the courthouse steps again, nor would he put his safety at risk by allowing court employees to carry him. *Id.* On the order of the trial judge, Lane was arrested and jailed for failure to appear. *Id.*

Subsequent proceedings in Lane's criminal case occurred in the same inaccessible courthouse. At those proceedings, Lane typically waited at the bottom of the stairs while his attorney shuttled back and forth to the courtroom. Pet. App. 16. As a result, the court conducted proceedings, including discussing the course of future proceedings and the possibility of a change of venue, out of Lane's presence.[3] When an arraignment hearing was called in the second-floor courtroom after a new misdemeanor indictment was returned in March 1997, Lane's attorney requested that the court dismiss or at least stay proceedings until accessible facilities could be provided. Pet. App. 16. The trial court denied the motion; the judge suggested that Lane might have a right to bring an independent civil suit to make the courthouse accessible, but that inaccessibility was no basis for delaying or dismissing the pending criminal case. See 3/17/97 Tr. 5. The Tennessee appellate courts declined to accept jurisdiction over Lane's request for extraordinary relief. Pet. App. 16-17. Proceedings were subsequently stayed in Lane's criminal case, *id.* at 17, and Lane ultimately pleaded guilty to a single charge of driving on a revoked license.

2. Beverly Jones—Respondent Beverly Jones has paraplegia and uses a wheelchair for mobility. Pet. App. 19. She works for parties to judicial proceedings as a certified court reporter, but because courthouses in many Tennessee counties are inaccessible, her opportunity to perform her work

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[3] The court held one proceeding (the preliminary hearing) in a location (the ground-floor library) that was accessible to Lane but generally inaccessible to the public. Pet. App. 16; cf. *Waller* v. *Georgia*, 467 U.S. 39, 48 (1984) (criminal defendant has constitutional right to public suppression hearing).

has been significantly impeded. *Id.* at 19-20. She has specifically requested modifications to the courthouses in four Tennessee counties, but none has been made accessible to her. *Id.* 20.

3. Ann Marie Zappola, Ralph E. Ramsey, Sr., Dennis Cantrel, and A. Russell Larson—Plaintiffs Ann Marie Zappola, Ralph E. Ramsey, Sr., Dennis Cantrel, and A. Russell Larson similarly were excluded from core state programs held at inaccessible Tennessee courthouses. Zappola has a spinal cord injury that makes it extremely painful if not impossible for her to climb stairs. Motion for Permissive Joinder of Cantrell *et al.* 6. In two cases in 1997 and 1998 (a civil proceeding in which she was a defendant, and a juvenile proceeding in which she was the complainant), Zappola was forced to climb the steps to the third floor of the Houston County Courthouse to attend proceedings. *Id.* at 6-7. Ramsey, who has a venous condition that makes him unable to climb stairs, was likewise a defendant in a civil proceeding. *Id.* at 8-9. When he arrived at the Cocke County Courthouse for a hearing on that case in 1995, Ramsey discovered that the courtroom was located on the second floor, up a flight of stairs; although Ramsey sent word that he was in the courthouse but could not get to the courtroom, the trial court entered judgment against him for failure to appear. *Id.* at 9. Cantrel, who has paraplegia, was forced to crawl up the stairs of the Fayette County Courthouse to attend a County Commission meeting. *Id.* at 3. And Larson, an attorney with a condition that makes it "difficult to impossible to climb stairs," Motion for Permissive Joinder of Larson 2, was required to provide pretrial representation to his clients in first-floor courthouse hallways and was unable to provide effective representation to clients whose cases went to trial, *id.* at 2-3.

III. Proceedings Below

Respondents filed this suit on August 10, 1998, against the State of Tennessee and a number of counties. Pet.

App. 12. Suing on their own behalf and as representatives of a class of persons denied access to the state's courthouses because of their disabilities, *id.* 25-27, respondents alleged that the defendants had violated Title II of the ADA by maintaining inaccessible courthouses, *id.* 23-25. They sought both damages and injunctive relief. *Id.* 27-28.

The state moved to dismiss on Eleventh Amendment grounds, the district court denied the motion, Pet. App. 7, and the state took an interlocutory appeal. The Sixth Circuit affirmed on the basis of *Popovich* v. *Cuyahoga County Court of Common Pleas*, 276 F.3d 808 (6th Cir.) (en banc), cert. denied, 537 U.S. 812 (2002), which held that Title II validly abrogates state sovereign immunity in cases in which the statute enforces due process principles. As amended on rehearing, the Sixth Circuit's opinion here explained that respondents were "seeking to vindicate" their due process "right of access to the courts in Tennessee." Pet. App. 5. The court therefore affirmed the denial of the motion to dismiss and remanded for further proceedings. *Id.*

SUMMARY OF ARGUMENT

Unlike Title I of the Americans with Disabilities Act (ADA)—the employment discrimination title that was at issue in *Board of Trustees* v. *Garrett*, 531 U.S. 356 (2001)—Title II of the statute directly implicates the core rights of citizenship. *Romer* v. *Evans*, 517 U.S. 620, 633 (1996). In the courthouse access context of this case, the constitutional concerns are particularly powerful, for courts that are inaccessible to people with disabilities threaten to violate an array of constitutional rights.

Because the court of appeals limited its analysis to the courthouse access context, and this Court can resolve this case without going further, we begin by focusing on the clear Section 5 justification for applying Title II to demand access to the state's court system. But the constitutional concerns addressed by the statute extend well beyond the narrow context of this case. Title II protects people with disabilities

against violations of constitutional rights in numerous areas of state government. Whether considered in its application to courthouse access or more broadly, Title II is a congruent and proportional response to actual and threatened violations of the Fourteenth Amendment. *City of Boerne* v. *Flores*, 521 U.S. 507, 520 (1997).

I. Congress clearly had power under Section 5 of the Fourteenth Amendment to require the State of Tennessee to assure that its court system, "when viewed in its entirety, is readily accessible to and usable by individuals with disabilities." 28 C.F.R. § 35.150(a). When a state maintains courts that are *not* accessible to people with disabilities, the state's actions threaten an array of constitutional rights under the First, Sixth, and Fourteenth Amendments that impose far more than rational-basis scrutiny on states. Both at the time the ADA was enacted and today, inaccessible courts have threatened to violate these rights of individuals with disabilities throughout the Nation. A variety of sources—legislative testimony, published studies, litigation records, and the Department of Justice's enforcement reports—demonstrate that the problem was and remains widespread.

Title II responds directly to the threat inaccessible courts pose to constitutional rights. It requires that court programs be accessible, a standard that can often be satisfied without making structural changes to existing facilities. See 28 C.F.R. § 35.150(a), (b)(1). If, as here, the lack of accessible court programs in a given county renders the state's court system not "readily accessible to and usable by" disabled citizens in that county, 28 C.F.R. § 35.150(b)(1) [please confirm], that is precisely the circumstance in which individuals with disabilities are most likely to experience violations of their constitutional rights. To the limited extent that this "program accessibility" requirement imposes obligations that go beyond those imposed by the Constitution itself, that additional margin is fully justified as a reasonably prophylactic measure given the substantial record of widespread courthouse inaccessibility.

II. Because Congress clearly had power to impose the "program accessibility" requirement on states in the courthouse access context of this case, this Court need go no further to uphold the statute as applied here. See *Salinas* v. *United States*, 522 U.S. 52, 60-61 (1997); *Griffin* v. *Breckenridge*, 403 U.S. 88, 104 (1971); *United States* v. *Raines*, 362 U.S. 17, 24-25 (1960). But even when considered more broadly, ADA Title II is proper Section 5 legislation. Unlike Title I of the statute—which equally barred employment discrimination in the public and private sectors—Title II focuses specifically on governmental conduct and was enacted on the basis of a weighty record of actual and threatened constitutional violations by states in a wide range of nonemployment areas. In many of these areas, the state is subject to constitutional constraints that impose more than rational-basis scrutiny. Even in instances where the state's conduct is ordinarily subject only to rational-basis scrutiny, Congress had ample reason to believe that applying Title II was necessary both to dismantle the widespread exclusion of people with disabilities that has effectively marked them as second-class citizens, cf. *Saenz* v. *Roe*, 526 U.S. 489, 506-07 (1999), and to stop the "mutually reinforcing stereotypes" that have "created a self-fulfilling cycle of discrimination." *Nevada Dep't of Human Resources* v. *Hibbs*, 123 S. Ct. 1972, 1982 (2003).

ARGUMENT

Unlike Title I of the Americans with Disabilities Act (ADA), which deals exclusively with employment discrimination, Title II of the ADA responds to a widespread denial of core rights and obligations of citizenship protected by the Constitution. By guaranteeing that people with disabilities will not be systematically shut out of the opportunity to participate in, influence, and seek redress from their state governments, the statute enforces a principle that this Court has deemed "[c]entral both to the idea of the rule of law and to our own Constitution's guarantee of equal

protection"—"the principle that government and each of its parts remain open on impartial terms to all who seek its assistance." *Romer* v. *Evans*, 517 U.S. 620, 633 (1996). Unlike ADA Title I, which implicates no fundamental rights and therefore involves conduct that triggers only rational-basis scrutiny, see *Garrett*, 531 U.S. at 365-68, Title II affects an array of conduct in which states have heightened constitutional obligations. Congress thus had broader latitude to craft a remedy than in Title I's employment context. See *Hibbs*, 123 S. Ct. at 1982.

The courthouse access context implicates these fundamental constitutional rights in an especially powerful way. Courthouses are the locations in which individual citizens often have their most important and extensive contacts with the government. In rural communities like the ones in which this case arose, the local courthouse is often the focal point of civic life. Wherever located, courthouses sit at the nexus of an array of rights and obligations of citizenship, including the opportunity to seek redress as litigants, to testify as witnesses, to participate as jurors, and to observe proceedings as members of the interested public. When a state's courthouses are inaccessible to individuals with disabilities, the state's actions effectively create a class of persons who are denied access to core privileges of citizenship. Such a result is intolerable under a Constitution that "'neither knows nor tolerates classes among citizens.'" *Romer*, 517 U.S. at 623 (quoting *Plessy* v. *Ferguson*, 163 U.S. 537, 539 (1896) (Harlan, J., dissenting)); cf. *Saenz*, 526 U.S. at 506-07 (Fourteenth Amendment's Citizenship and Privileges or Immunities Clauses do not allow for degrees of citizenship or a hierarchy among citizens).

Both the state and its *amici* reassure the Court that their position does not call into question the ultimate constitutionality of Title II; all that supposedly is at issue is whether Congress can properly impose a damages remedy on states that have violated the statute. See Pet. Br. 15-16; Ala. Br. 25-26. But the reassurances of the state and its *amici* ring

hollow. If this Court rules that Title II cannot be supported by a sufficient Fourteenth Amendment predicate, the statute will provide no basis for *any* relief—damages *or* an injunction—unless it can be upheld under Congress's Article I commerce power. In their brief before this Court, the State's *amici* pointedly refuse to concede that the commerce power supports Title II. See Ala. Br. 5 (noting that an injunctive remedy exists for Title II violations only "assuming [Title II] is a valid exercise of Congress's Article I power"); *id.* 22, 25 (same). And a number of states have recently challenged the Commerce Clause basis for the statute. See *Thompson* v. *Colorado*, 278 F.3d 1020, 1025 n.2 (10th Cir. 2001), cert. denied, 535 U.S. 1077 (2002); *State* v. *Rendon*, 832 So. 2d 141, 146 n.5 (Fla. Dist. Ct. App. 2002), rvw. denied, 851 So. 2d 729 (Fla. 2003); *Meyers* v. *Texas*, No. 02-50452 (5th Cir.) (pending); *Doe* v. *Regier*, No. 03-2794 (Fla. Dist. Ct. App.) (pending); *McCarthy* v. *Hale*, No. 03-50608 (5th Cir.) (pending). Of particular importance, the applications of Title II that come closest to the core of Congress's Fourteenth Amendment power—those guaranteeing participation in such quintessential activities of self-government as voting, jury service, and the like—are precisely those that are least likely to be sustained under the Commerce Clause. For all intents and purposes, then, petitioner is mounting a facial challenge to the basic constitutionality of Title II.

A ruling that Title II exceeds Congress's authority would invalidate the very "'milestone on the path to a more decent, tolerant, progressive society'" that the State purports to endorse.[4] Pet. Br. 15-16 (quoting *Garrett*, 531 U.S. at 375

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[4] Since passage of the ADA, laws requiring accessibility have become common outside the United States according to a study undertaken by the United Nations in 1996, more than 60 of the 85 respondents had some sort of legislation in place to ensure accessibility of public places to the disabled. D. Michailakis, Government Action on Disability Policy: A Global Survey (1997).

(Kennedy, J., concurring)). Fortunately, Title II fully meets the state's constitutional challenge. The statute directly enforces core Fourteenth Amendment rights—particularly where, as here, plaintiffs seek nothing more than access to the state's courts. This Court should thus uphold Title II as proper Section 5 legislation. Because the court of appeals focused its analysis on the courthouse access context, and this Court can resolve this case without going beyond that context, we begin by showing that Congress plainly had Section 5 power to require states to make their court systems accessible. As we demonstrate, however, Title II as a whole is a proper exercise of Section 5 authority as well.

I. Title II's Requirement That State Courts Be Accessible To People With Disabilities Reasonably Protects Against Violations Of Disabled Citizens' Rights Of Access To The Courts

This Court has held that Congress has power under Section 5 of the Fourteenth Amendment to enact "reasonably prophylactic legislation" that responds to actual or threatened constitutional violations, *Kimel* v. *Florida Bd. of Regents*, 528 U.S. 62, 88 (2000), so long as there is "a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *City of Boerne*, 521 U.S. at 520. Applying that test, Congress had ample authority to impose Title II's requirement of program accessibility on state court systems. Inaccessible courts threaten an array of constitutional rights, and the program

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Australia, for example, requires that facilities be accessible to the disabled, unless doing so would cause an undue hardship. See Disability Discrimination Act of 1992, § 23; see also United Kingdom Disability Discrimination Act 1995, §§ 19-21. See generally Theresia Degener & Gerard Quinn, A Survey of International, Comparative, and Regional Disability Law Reform, *in* Disability Rights Law and Policy: International and National Perspectives 3, 19, 20, 29-34 (Mary Lou Breslin et al. eds., 2002).

accessibility requirement, when considered in the light of the nationwide problem of inaccessible courthouses, is reasonably calculated to prevent the constitutional harm without unduly impinging on state interests.

A. Inaccessible Courts Threaten An Array Of Constitutional Rights

In determining whether Congress has properly exercised its Section 5 authority, the "first step" is to identify the constitutional rights Congress has sought to enforce. *Garrett*, 531 U.S. at 365. Where Congress regulates state conduct that implicates ordinary rational-basis scrutiny, this Court accords the legislature comparatively little latitude to craft prophylactic legislation. See *Garrett*, 531 U.S. at 367; *Kimel*, 528 U.S. at 86. Where, by contrast, Congress seeks to regulate state conduct that implicates heightened constitutional obligations, this Court has recognized that the legislature must have a substantially wider area in which to act. See *Hibbs*, 123 S. Ct. at 1982 (according Congress greater leeway because "the standard for demonstrating the constitutionality of a gender-based classification is more difficult to meet than our rational-basis test").

The statutory obligation at issue in this case implicates a variety of fundamental constitutional rights that impose far more than a rational-basis requirement on states. Plaintiffs here seek to enforce the requirement that the state operate a court system that, "when viewed in its entirety, is readily accessible to and usable by individuals with disabilities." 28 C.F.R. § 35.150(a). When a state violates that requirement by conducting its judicial proceedings in courthouses that are inaccessible, the state threatens an array of constitutional rights secured by the Fourteenth Amendment to both its disabled and its nondisabled citizens. Where, as here, disabled citizens in a number of counties lack ready access to the state's courts because judicial proceedings are held in inaccessible courthouses, and people with disabilities are compelled to appear as litigants in inaccessible courtrooms,

the state's actions threaten to shut out an entire class of citizens from a range of civic rights and obligations simply because those citizens have disabilities.

At the most basic level, such inaccessible courts threaten the core right of individuals with disabilities to seek the "protection of the laws" by invoking the proceedings of courts for redress. Cf. *Romer*, 517 U.S. at 633 (equal protection requires "that government *and each of its parts* remain open on impartial terms to all who seek its assistance") (emphasis added). And they threaten the related First Amendment right "to petition the Government for redress of grievances," which includes a "right of access to the courts." *BE&K Constr. Co.* v. *NLRB*, 536 U.S. 516, 525 (2002) (internal quotation marks omitted); cf. *City of Boerne*, 521 U.S. at 519 (Section 5 gives Congress power to enforce incorporated Bill of Rights protections).

Inaccessible courthouses prevent individuals with disabilities from invoking protections of the law that are available only in court. The experience of plaintiff Zappola provides an example. In order to initiate legal proceedings by swearing out a juvenile-court complaint, she was required to bring herself to a third-floor courtroom in an inaccessible courthouse. See p. 6, *supra*. Zappola's experience is hardly unusual. Individuals with disabilities who seek to obtain restraining orders against those who threaten violence against them will also be unable to obtain the protection of the laws if the court system is inaccessible, as will those individuals with disabilities who seek to testify as victim-witnesses in criminal trials. As the California Attorney General's Commission on Disability noted in 1989, the inability to testify and seek redress is a particularly salient issue for many individuals with disabilities, whose impairments make them especially vulnerable targets of abuse or predation. See Attorney General's Comm'n on Disability, Final Report 101-02 (1989) (finding that victims and witnesses with disabilities encounter "significant barriers to due process and just treatment" because, *inter alia*, many courtrooms are inaccessible). One

witness in the congressional hearings on the proposed ADA, a woman with quadriplegia who had "experienced many crimes," described the constitutional harm she experienced because of her inability to obtain the law's protection: "I live in fear of crime because equal protection under law is not seen as a right of Americans with disabilities because Americans with disabilities are seen as natural victims rather than equal citizens." 2 Leg. Hist., *supra*, at 1196-97 (Cynthia Miller).

The opportunity to testify and seek redress in the courts was a primary aspect of the "protection of the laws" that the Fourteenth Amendment's drafters sought to guarantee to all persons. See *Reynolds* v. *Sims*, 377 U.S. 533, 597 (1964) (Harlan, J., dissenting) (quoting Thaddeus Stevens's speech opening debate on the Fourteenth Amendment in the House of Representatives). The shutting out of an entire class of citizens from such a core means of obtaining legal protection makes that class, in a real sense, "a stranger to [the state's] laws." *Romer*, 517 U.S. at 635.[5]

Inaccessible courts also threaten the rights of litigants with disabilities, guaranteed by the Sixth Amendment and the Due Process Clause, to be present at and participate meaningfully in a range of court proceedings. This Court has

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[5] It is irrelevant that the denial of the protection of the laws in such circumstances may be unintentional. Discriminatory purpose is not required to make out an equal protection violation in fundamental rights contexts. See *Bush* v. *Gore*, 531 U.S. 98, 105-06 (2000) (per curiam) (requirement that election officials discern intent of the voter violates equal protection because of lack of safeguards to assure that ballots are counted in a uniform manner, even absent any indication of purpose that the requirement be applied in a *dis*uniform manner). In the access to courts context specifically, this Court has recognized both that no purposeful discrimination requirement applies and that states may be required to shoulder some financial burden to guarantee access. See *M.L.B.* v. *S.L.J.*, 519 U.S. 102, 125-27 (1996).

held, for example, that both the Sixth Amendment's Confrontation Clause and the due process guarantee of a fair trial give criminal defendants the "right to be present at all stages of the trial where [their] absence might frustrate the fairness of the proceedings." *Faretta* v. *California*, 422 U.S. 806, 819 n.15 (1975).[6] Under this Court's line of cases running from *Boddie* v. *Connecticut*, 401 U.S. 371 (1971), through *M.L.B.*, *supra*, moreover, states have an obligation to facilitate the presence of litigants who are compelled to participate in many *civil* proceedings—at least where such presence is necessary to provide a "meaningful opportunity to be heard." *Boddie*, 401 U.S. at 379. In many cases, this constitutional obligation requires states to bear some cost to facilitate access, at least where doing so imposes no "undue burden on the State." *M.L.B.*, 519 U.S. at 122; see *id.* at 124 (state must waive fee requirement for obtaining appellate transcript in termination of parental rights proceeding);

[6] The state's *amici* note that this right is not absolute. Ala. Br. 14-15. They cite cases that hold that "'the privilege [of personally confronting witnesses] may be lost by consent or at times even by misconduct,'" *Illinois* v. *Allen*, 397 U.S. 337, 342-43 (1970) (quoting *Snyder* v. *Massachusetts*, 291 U.S. 97, 106 (1934)), and that courts may override the Sixth Amendment's requirement of face-to-face confrontation "where denial of such confrontation is necessary to further an important public policy." *Maryland* v. *Craig*, 497 U.S. 836, 850 (1990); see *id.* at 857 (finding that standard satisfied by the state's interest in "protect[ing] a child witness from trauma that would be caused by testifying in the physical presence of the defendant, at least where such trauma would impair the child's ability to communicate"). But these narrow, case-by-case exceptions to the general right of courtroom presence are a far cry from the broad inability to attend court proceedings imposed by an inaccessible court system—a denial of the right to presence that is imposed, not because of any fault of the defendant or overriding public policy, but simply because of the constitutionally irrelevant fact that the defendant has a disability.

Boddie, 401 U.S. at 380-81 (state must waive filing fee requirement for divorce proceeding).

When courts are inaccessible, criminal defendants and participants in important civil proceedings face a serious risk that they will be unable effectively to protect their interests in the litigation simply because of their disabilities.[7] The experience of respondent Lane, who was arrested for failure to appear when he could not ascend the stairs to attend his pretrial hearing, provides a particularly dramatic example. See p. 4-5, *supra*. But Lane's experience is not atypical. Plaintiff Ramsey had a similar experience when he was a defendant in a civil proceeding: a default judgment was entered against him when he could not ascend the stairs to the courtroom in which the case was being heard. See p. 6, *supra*.

And inaccessible courts do not simply exclude individuals with disabilities from participation as *litigants*; they also operate to bar such individuals from the civic right and obligation of jury service. Although individuals with disabilities might be properly excused from the jury pool on a case-by-case basis, a court system that broadly excludes people with a class of impairments from jury service violates core Sixth Amendment principles. This Court has held that "excluding identifiable segments playing major roles in the community cannot be squared with the constitutional concept of jury trial." *Taylor* v. *Louisiana*, 419 U.S. 522, 530 (1975).

It is not just criminal defendants who suffer when inaccessible courts deny people with disabilities the opportunity to participate as jurors; disabled would-be jurors experience constitutional harm as well. "Jury service is an exercise of responsible citizenship by all members of the

[7] As plaintiff Larson's experience demonstrates, inaccessible courts can also deny criminal defendants who choose to be represented by attorneys with disabilities their Sixth Amendment right to the counsel of their choice. See, *e.g.*, *Wheat* v. *United States*, 486 U.S. 153, 159 (1988).

community, including those who otherwise might not have the opportunity to contribute to our civic life." *Powers* v. *Ohio*, 499 U.S. 400, 402 (1991). "Indeed, with the exception of voting, for most citizens the honor and privilege of jury duty is their most significant opportunity for participation in the democratic process." *Id.* at 407. By denying them the opportunity to participate in such a core aspect of citizenship, the exclusion of people with disabilities from jury service "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life." *Olmstead* v. *L.C.*, 527 U.S. 581, 600 (1999). No more than a state could deny individuals with disabilities the right to vote by refusing to provide accessible polling places, a state may not deny individuals with disabilities the right to jury service by refusing to provide accessible courthouses. Cf. *M.L.B.*, 519 U.S. at 123-24 (stating that the right to vote or run for office cannot be limited by the ability to pay for a license, even if the fee provides the state needed revenue).

Finally, inaccessible courts also prevent a large class of individuals with disabilities from attending court proceedings as members of the interested public. This Court's cases make clear both that members of the public have a First Amendment right to attend criminal proceedings, and that criminal defendants themselves have a Sixth Amendment right to public access to the proceedings in which they participate. See *Press-Enterprise Co.* v. *Superior Court*, 478 U.S. 1, 8-15 (1986) (First Amendment right of public to access proceedings); *Waller* v. *Georgia*, 467 U.S. at 46 (Sixth Amendment right of defendant to public access). The state's *amici* assert that these guarantees are satisfied so long as members of the public are *generally* allowed to attend proceedings; there is, in *amici*'s words, no "individualized personal right to attend trial." Ala Br. 13 n.3.[8] That assertion

[8] *Amici* also assert that the First Amendment right of public access triggers only rational basis scrutiny. Ala. Br. 13 n.3. To the contrary, this Court has made clear that the right of public access to court proceedings "may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest," *Press-Enterprise*, 478 U.S. at 9 (internal quotation marks omitted)—a standard the Court has expressly labeled "strict scrutiny," *Globe Newspaper Co.* v. *Superior Court*, 457 U.S. 596, 607 n.17 (1982).

is doubly flawed. First, *amici* ignore this Court's explanation that the First Amendment right of access to court proceedings "serves to ensure that the *individual citizen* can effectively participate in and contribute to our republican system of self-government." *Globe Newspaper Co.*, 457 U.S. at 604 (emphasis added). Second, the exclusion of a broad class of individuals from a broad array of judicial proceedings simply because of those individuals' disabilities—the inevitable consequence of an inaccessible court system—goes much farther than the isolated denial of an individual's chance to attend a particular hearing. Citizens with disabilities, like those without them, have a "fundamental, natural yearning to see justice done," *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555, 571 (1980) (opinion of Burger, C.J.)—one that cannot be satisfied if they are categorically unable to attend court proceedings.

From the foregoing, it should be clear that the maintenance of courts that are inaccessible to individuals with disabilities operates to exclude a large class of persons from the exercise of many core rights and obligations of citizenship and puts an array of constitutional rights at risk. This case is therefore decisively unlike *Garrett*, which involved ADA Title I. Title I applies to state governments only when they act in their capacity as employers—a context in which the state's decisions are judged only by the deferential rational-basis test. See *Garrett*, 531 U.S. at 366-68; cf. *Board of County Comm'rs* v. *Umbehr*, 518 U.S. 668, 676 (1996) ("'[T]he government's interest in achieving its goals as effectively and efficiently as possible is elevated from a

relatively subordinate interest when it acts as sovereign to a significant one when it acts as employer.'") (quoting *Waters* v. *Churchill*, 511 U.S. 661, 675 (1994) (plurality opinion)). Here, by contrast, plaintiffs invoke Title II in a context in which the states have heightened constitutional obligations to their citizens.

B. There Is A Significant Pattern Of Inaccessible Courts Throughout The States

The threat to constitutional rights posed by inaccessible courts is not merely theoretical. At the time Congress adopted the ADA, inaccessible courthouses were a major problem across the Nation--and significant problems remain even today. There is thus a substantial "history and pattern" of state constitutional violations. *Garrett*, 531 U.S. at 368. Particularly given the heightened constitutional interests at stake, see *Hibbs* 123 S. Ct. at 1982, that pattern is more than sufficient to support Title II's requirement that court systems be accessible to individuals with disabilities.

1. The record Congress compiled in developing the ADA makes clear that courthouses throughout the country were inaccessible at the time of the statute's enactment. A Civil Rights Commission report that provided much of the basis for Congress's consideration of the statute declared that seventy-six percent of all state buildings open to the general public were inaccessible to people with disabilities. U.S. Comm'n on Civil Rights, Accommodating the Spectrum of Individual Abilities 39 (1983). Congress had every reason to conclude that courthouses were no exception.[9] Hearings held

[9] Many of the examples Respondents cite involve courts that are designated "local" or "county" courts. But although *Garrett* declined to attribute localities' acts of *employment* discrimination to the states for purposes of the Eleventh Amendment abrogation analysis, see *Garrett*, 531 U.S. at 368-69, the inaccessibility of proceedings at nominally "local" courts *is* properly attributed to the states for those purposes. "County," "City," and "Municipal" courts are frequently held to be arms of the state entitled to

by congressional committees and by the congressionally designated Task Force on the Rights and Empowerment of Americans with Disabilities[10] discussed inaccessible

Eleventh Amendment immunity. See, *e.g.*, *Callahan* v. *City of Philadelphia*, 207 F.3d 668, 670-74 (3d Cir. 2000) (Pennsylvania Municipal Courts are arms of the state); *Kelly* v. *Municipal Courts*, 97 F.3d 902, 907-08 (7th Cir. 1996) (Marion County, Indiana, Municipal Court is arm of the state); *Franceschi* v. *Schwartz*, 57 F.3d 828, 831 (9th Cir. 1995) (California Municipal Courts are arms of the state); *Jernigan* v. *Superior Court*, No. C03-2530WHA(PR), 2003 WL 21640489 at *1 (N.D. Cal. July 7, 2003) ("The Superior Court for Santa Clara County is an arm of the state and thus under the Eleventh Amendment cannot be sued in federal court."). Even when such courts are not in and of themselves arms of the state, their failure to provide access to proceedings that adjudicate rights established by state law—and that frequently result in confinement in a state prison—is surely attributable to the state for Eleventh Amendment purposes. Cf. *Carter* v. *City of Philadelphia*, 181 F.3d 339, 352-53 (3d Cir. 1999) (county prosecutors are state agents for Eleventh Amendment purposes when they bring prosecutions to enforce state law, although they are county agents when they manage their own offices), cert. denied, 528 U.S. 1005 (1999); *Esteves* v. *Brock*, 106 F.3d 674, 678 (5th Cir.) (in Texas, "when acting in the prosecutorial capacity to enforce state penal law, a district attorney is an agent of the state [for § 1983 purposes], not of the county in which the criminal case happens to be prosecuted," though district attorney is a county agent for other purposes), cert. denied, 522 U.S. 828 (1997); *Pusey* v. *City of Youngstown*, 11 F.3d 652, 658 (6th Cir. 1993) (local prosecutor, though a city employee, "acts as a state agent [for § 1983 purposes] when prosecuting state criminal charges"), cert. denied, 512 U.S. 1237 (1994).

[10] Although the *Garrett* Court noted, 531 U.S. at 370, that testimony submitted to the Task Force was not submitted "directly to Congress," it did not disregard that evidence. See *id.* at 371 n.7 (considering evidence before Task Force and discounting it because, *inter alia*, nearly all of it related to discrimination by states outside of the employment context). Nor could the Court properly have done so, for the Task Force was a body specifically

courthouses and court proceedings in at least eighteen states—including Tennessee.[11]

Even today, thirteen years after enactment of the ADA, there is ample evidence that the problem of inaccessible courthouses persists in every corner of the Nation. Published studies have identified serious and pervasive denials of accessibility in a number of state court systems. In Tennessee, the state's own commission on the future of its judicial system warned in 1996 that "[f]or persons with physical or mental impairment, the system can be quite literally inaccessible." Comm'n on the Future of the

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appointed by the chair of a congressional subcommittee of jurisdiction to gather facts regarding the proposed legislation. See 1 Leg. Hist., *supra*, at 300. The determination of the means by which Congress will inform itself regarding pending legislation is a core legislative prerogative under our Constitution's separation of powers. See *Buckley* v. *Valeo*, 424 U.S. 1, 137-38 (1976) (per curiam). See also *City of Boerne*, 521 U.S. at 531-32 ("As a general matter, it is for Congress to determine the method by which it will reach a decision.").

[11] See 2 Leg. Hist., *supra*, at 1070-71 (Massachusetts); *id.* at 1078-79 (Connecticut); *Americans with Disabilities Act of 1989: Hearings Before Senate Comm. on Labor & Subcom. on the Handicapped* 663-664 (1989) [hereinafter May 1989 Hearings] (Mary Lynn Fletcher) (Tennessee); Task Force Submissions, Ala. 0005, 0006, 0015; Task Force Submission, Cal. 0254; Task Force Submission, Col. 0273; Task Force Submission, Ga. 0374; Task Force Submission, Haw. 0496; Task Force Submissions, Idaho 0506, 0528; Task Force Submission, Mass. 0812; Task Force Submissions, Miss. 0990, 0998; Task Force Submission, Mo. 1015; Task Force Submission, Pa. 1394; Task Force Submission, S.D. 1475; Task Force Submissions, Va. 1663, 1668, 1674, 1676, 1678, 1679, 1680; Task Force Submission, Wash. 1690; Task Force Submission, W. Va. 1745; Task Force Submission, Wis. 1771; Task Force Submission, Wyo. 1786; see also 2 Leg. Hist., *supra*, at 1993 (reprinting *New York Times* article in which a lawyer with a disability described courtrooms as "often inaccessible").

Tenn. Judicial Sys., *supra*, at 31. Similar reports addressing courthouse accessibility in California, Florida, Missouri, New York, Texas, and Washington State have echoed that warning; those reports have often provided detailed accounts of the barriers faced by people with disabilities who seek to participate in court proceedings.[12]

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[12] See Judicial Council of California, Public Hearings Report: Access for Persons with Disabilities at 5-68 to 5-79 (1996) (detailing numerous problems of physical accessibility throughout the state's courts); N.Y. State Comm'n on Qual. of Care for the Mentally Disabled & N.Y. State Bar Ass'n Comm. on Mental & Physical Disability, Survey of Access to N.Y. State Courts for Individuals with Disabilities 13 (1994) (finding based on a stratified, random sample of 275 New York courts that "only 8% of all courtrooms were fully accessible"; "only 30% of the courts provided accessible rest rooms"; and well over half lacked accessible parking spaces, proper signage, and accessible elevators); Burton D. Dunlop & Marisa E. Collett, Jury Service Accessibility for Older Persons and Persons with Disabilities in Florida, (study by Florida International University's Center on Aging concluding that "some of Florida's courts remain clearly out of compliance with some of the basic requirements for accommodating persons with disabilities"—*inter alia*, more than 40% of sampled courts did not have even a single accessible jury box); Phyllis S. Launius, Removing Public Access Barriers to the Courts in the New Millennium: A Sampling and Analysis of Missouri's Trial Courts 3-4 (2000) (study for the Missouri Office of State Courts Administrator finding "many barriers limiting access to those individuals with physical disabilities" and observing that "only 26 percent of this sample's accessed areas are compliant with ADA standards"); Texas Civil Rights Project, Courts Closed to Justice: A Survey of Courthouse Accessibility in Texas for People with Disabilities 4-5 (1996) (concluding that "the accessibility of courtrooms for jurors, litigants, members of the public, and attorneys with disabilities is abysmal and unjustifiable" in Texas courts, and discussing several widespread courthouse accessibility problems); Civil and Legal Rights Subcomm., Governor's Comm. on Disability Issues & Employment, Interim Court and Courthouse

In addition, there has been "extensive litigation," *Garrett*, 531 U.S. at 376 (Kennedy, J, concurring), challenging the lack of accessibility at courthouses across the country. In a number of these cases, plaintiffs have received final adjudications in their favor. See, *e.g.*, *Layton* v. *Elder*, 143 F.3d 469, 472 (8th Cir. 1999) (directing entry of injunction against inaccessible courthouse); *Matthews* v. *Jefferson*, 29 F. Supp. 2d 525, 533-34 (W.D. Ark. 1998) (granting summary judgment to plaintiff); *Kroll* v. *St. Charles County*, 766 F. Supp. 744, 752 (E.D. Mo. 1991) (concluding that inaccessible courthouse violated the Rehabilitation Act). Others have resulted in favorable settlements for plaintiffs, and still others remain at an earlier procedural stage.[13]

Because complaints filed by individual plaintiffs are not collected in any readily accessible centralized database, the cases cited above presumably represent only a fraction of the courthouse-access suits that have been brought since the effective date of the ADA. A richer picture comes from the

Access Project 1 (2000) (observing "that there are some serious access problems in the courts and courthouses in Washington" and that those problems "appeared to extend to all courts: Superior, Municipal, District, and Juvenile").

[13] See, *e.g.*, *Shotz* v. *Cates*, 256 F.3d 1077, 1080-81 (11th Cir. 2001) (plaintiffs stated claim for Title II violation based on inaccessible courthouse); *Salmond* v. *County of Teton*, No. CV-97-130-GF-LBE (D. Mont. Dec. 21, 2000) (consent decree in litigation regarding accessibility of Teton County Courthouse); *Davis* v. *Tuolumne County*, No. CV-F-97-5516-SMS (E.D. Cal.) (consent decree in litigation regarding accessibility of Tuolumne County Courthouse); *No Barriers, Inc.* v. *Cornelius*, No. 3:97CV-2330-R (N.D. Tex.) (settlement in litigation regarding accessibility of Ellis County Courthouse); *Jonas* v. *General Services Comm'n*, No. A-95-CV-468-JN (W.D. Tex.) (settlement in litigation regarding accessibility of building housing state Supreme Court and Court of Criminal Appeals); *Miles* v. *County of Los Angeles*, No. 02-CV-3932 DT (JTLx) (C.D. Cal.) (complaint challenging several inaccessible courthouses in Los Angeles County).

United States Department of Justice's published enforcement records. Those records demonstrate that the inaccessibility of courthouses is a nationwide problem. On its website, *http://www.usdoj.gov/crt/ada/enforce.htm*, the Department posts periodic status reports that provide a snapshot of its enforcement activities; it also posts the full text of selected settlement agreements. A review of the posted reports and agreements reveals over 120 instances in forty-one states (including at least six in Tennessee) in which state courts and court proceedings were inaccessible, and the court system agreed to make its facilities and proceedings more accessible only after the federal government intervened (typically in response to a citizen complaint). See App., *infra*. Given the limitations on the federal government's enforcement resources (and the fact that the Department of Justice's published status reports do not purport to be comprehensive), these enforcement actions likely represent only the tip of the iceberg. But they demonstrate in any event that courthouse inaccessibility is a problem of nationwide scope.

Particularly in light of the fundamental constitutional interests at stake in the denial of access to court proceedings, the widespread record of inaccessible courthouses across the country is more than "weighty enough to justify the enactment of prophylactic § 5 legislation." *Hibbs*, 123 S. Ct. at 1981. Through a variety of sources—legislative testimony, published studies, litigation records, and the Department of Justice's enforcement reports—the public record describes significant limitations in courthouse accessibility in nearly every state. Those limitations threaten the constitutional rights of disabled litigants, jurors, and members of the interested public. This is hardly a case in which Congress has sought to impose on states "an unwarranted response to a perhaps inconsequential problem." *Kimel*, 528 U.S. at 89; cf. *Garrett*, 531 U.S. at 369-70 (half-dozen incidents "fall far short of even suggesting" a "pattern of unconstitutional discrimination" against people with disabilities in state employment). Rather, Title II's requirement that court

programs be accessible to individuals with disabilities responds to the potent threat that inaccessible proceedings have posed and continue to pose to the constitutional rights of individuals with disabilities.

2. The continuing record of inaccessible courthouses throughout the country puts the lie to the assertion, made by both the state and its *amici*, that the existence of state laws requiring accessible construction made the ADA unnecessary. See Pet. Br. 16 n.2, 22; Ala Br. 22-24. To the contrary, Congress enacted the ADA based on the conclusion, given its own heading in the House Education and Labor Committee report on the bill, that "CURRENT FEDERAL AND STATE LAWS ARE INADEQUATE." 1 Leg. Hist., *supra*, at 320. The Civil Rights Commission had determined that "[d]espite . . . the fact that nearly every state has a statute prohibiting architectural barriers, such barriers continue to be a serious problem." U.S. Comm'n on Civil Rights, *supra*, at 38. And Congress even heard specific testimony regarding the failure of Tennessee's own law to guarantee access. See May 1989 Hearings, *supra*, at 663-64 (Mary Lynn Fletcher).

A recent, comprehensive study of state laws that purport to guarantee the accessibility of state facilities demonstrates that Congress had ample basis for finding those laws inadequate. The authors found that only twenty-three states had laws that "provided clear statutory language with protection comparable to ADA Title II," Ruth Colker & Adam Milani, *The Post-Garrett World: Insufficient State Protection Against Disability Discrimination*, 53 Ala. L. Rev. 1075, 1083 (2002)—even *after* (as petitioner's *amici* emphasize) twenty states responded to the ADA's passage by "enact[ing] new protections for the disabled or strengthen[ing] existing protections." Ala. Br. 24 & n.5. Cf. *Hibbs*, 123 S. Ct. at 1980 (discounting state family leave policies because "it was only since Federal family leave legislation was first introduced that the States had even begun

to consider similar family leave initiatives") (internal quotation marks and brackets omitted).[14] Most important here, the procedures for enforcing these accessibility laws against the states often range from the uncertain to the nonexistent. See Colker & Milani, *supra*, at 1087-92, 1102-18 (cataloging state statutes). Given these significant limitations in coverage and enforcement, it is no surprise that the statutes cited by the state and its *amici* have failed to solve the problem of courthouse inaccessibility, in Tennessee and throughout the country. Just as the "important shortcomings of some state policies" supported Congress's decision to impose a uniform requirement of family and medical leave, *Hibbs*, 123 S. Ct. at 1980, the many shortcomings of existing state accessibility laws gave Congress ample reason to believe that a uniform federal guarantee was necessary.

This Court has recognized that Congress may properly attend to the ways in which states' actual practices diverge from their formal policies. See *id.* ("evidence that, even where state laws and policies were not facially discriminatory, they were applied in discriminatory ways," supports Congress's adoption of a universal guarantee of family and medical leave); *South Carolina* v. *Katzenbach*,

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[14] In their haste to sing the praises of states' "beneficen[ce]," Ala. Br. 22, the state's *amici* fall into self-contradiction. *Amici* first contend that Title II will stifle state enactment of broader protections for individuals with disabilities, because "enforcement of federal anti-discrimination law by way of private damages actions naturally tends to remove, or displace, the States' incentives to create their own such protections for their citizens." Ala. Br. 23. But on the *very next page* they tout the fact that "since the ADA's passage several States have enacted new protections for the disabled or strengthened existing protections." Ala. Br. 24 (citing 20 such states). Even if it were the province of the Court to consider such policy questions, it should be obvious from *amici*'s own argument that the enforcement of Title II has not displaced state protections for people with disabilities; it has spurred them into existence.

383 U.S. 301, 333-34 (1966) (Congress could properly prohibit state literacy tests, constitutional on their face, based on evidence that they had been discriminatorily administered). Tennessee and its *amici* therefore may not hide behind the formal guarantees of accessibility that appear on their statute books. Whatever Tennessee law may declare regarding the accessibility of public buildings, the simple fact remains that at the time this lawsuit was filed more than twenty county courts in the state remained inaccessible. As the evidence discussed above indicates, similar statements could be made about states throughout the Nation. Congress was entitled to conclude that the proof of any accessibility legislation lies in actual access, and that the widespread inaccessibility of state courts required a federal remedy.

C. Title II's Program Accessibility Requirement Is A Proportional Response To The Constitutional Violations Threatened By Inaccessible Courts

From the foregoing, it should be evident that Title II's requirement of accessibility in court proceedings is a "reasonably prophylactic" measure, *Kimel*, 528 U.S. at 88, that permissibly serves "to prevent and deter unconstitutional conduct," *Hibbs*, 123 S. Ct. at 1977. Although any given instance in which an individual is denied access to court proceedings might not violate the Constitution, cf. Ala. Br. 11-16 (arguing that inaccessible court proceedings are not always unconstitutional), a judicial system marked by inaccessible courthouses will likely violate the constitutional rights of litigants, witnesses, jurors, and the general public in a large number of cases. See *City of Boerne*, 521 U.S. at 532 (preventive measures satisfy Section 5 when "there is reason to believe" that much of the conduct they target has "a significant likelihood of being unconstitutional"). And the nationwide phenomenon of inaccessible courthouses—a phenomenon that persisted long after the Rehabilitation Act of 1973—demonstrates that Congress faced a "[d]ifficult and intractable problem[]" that "require[s] powerful remedies."

Kimel, 528 U.S. at 88. As the Senate committee report on the ADA noted, the Rehabilitation Act's requirement that the defendant program receive federal funds had proved burdensome and confusing to plaintiffs, thus limiting the statute's effectiveness. See 1 Leg. Hist., *supra*, at 110 (quoting Neil Hartigan). Contrary to the state's argument, Pet. Br. 35-36, this is quite clearly an area "where previous legislative attempts had failed" and "added prophylactic measures" were justified. *Hibbs*, 123 S. Ct. at 1982.

1. Title II's requirement of program accessibility is precisely targeted at those situations that are most likely to violate constitutional rights. That requirement is clearly violated when, as here, litigants with disabilities are compelled to attend proceedings in inaccessible courthouses, and the lack of accessible facilities in a given county renders the state's courts not "readily accessible to and usable by" disabled citizens in that county. 28 C.F.R. § 35.150(a). Such core violations of the program accessibility requirement are precisely the circumstances in which individuals with disabilities are most likely to be deprived of their constitutional rights of access to the courts. To the limited extent that this requirement imposes obligations that go beyond those imposed by the Constitution itself, its additional margin of protection is fully justified by the widespread record of inaccessible courthouses we discuss above. That requirement is "congruent and proportional to its remedial object, and can 'be understood as responsive to, or designed to prevent, unconstitutional behavior.'" *Hibbs*, 123 S. Ct. at 1984 (quoting *City of Boerne*, 521 U.S. at 532).

Amici appear to contend that Title II cannot be congruent and proportional unless each individual plaintiff who invokes the statute can show that the state actually violated his or her constitutional rights. See Ala. Br. 13-14 (denying that Jones's constitutional rights were violated); *id.*

15 (denying that Lane's constitutional rights were violated).[15] This Court has made clear, however, that "Congress 'is not confined to the enactment of legislation that merely parrots the precise wording of the Fourteenth Amendment,' but may prohibit 'a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text.'" *Hibbs*, 123 S. Ct. at 1983 (quoting *Kimel*, 528 U.S. at 81). The proper question is whether inaccessible courts sufficiently threaten constitutional rights that a requirement of accessibility in court programs operates as a "reasonably prophylactic" response. *Kimel*, 528 U.S. at 88. That standard is amply satisfied here.

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[15] In any event, *amici* are simply incorrect about the facts of Respondents' cases. *Amici* emphasize the state judge's offer to hold Lane's *trial* in a different, accessible location. Ala. Br. 15. But the state offered Lane no alternative means of access before arresting him for failure to appear at a pretrial hearing (other than the unsafe and humiliating suggestion that they might carry him up the stairs). In those circumstances, his arrest constituted a due process violation that was independent of any right Lane had to appear personally at *later* proceedings. The lower-court judge held a subsequent preliminary hearing in the accessible law library. In later proceedings, a trial-level judge offered to hold the trial in the same library or in an accessible courthouse in a different county (although he made this offer at a hearing that was inaccessible to Lane), but neither option fully preserved Lane's constitutional rights: The library was not generally accessible to the public, thereby impinging on Lane's right to public proceedings, see *Waller*, 467 U.S. at 46-48; and a change of venue would have been burdensome and denied Lane's state constitutional right to trial in the county in which he was charged. As to Jones, *amici* urge the lack of any constitutional right to obtain courthouse access for the specific purpose of plying one's trade. Ala. Br. 13-14. But whether or not such a specific right exists, Jones was denied her more general right as a member of the public to attend court proceedings.

2. Title II also includes a number of limitations that permit flexibility and cushion the burden on states. Contrary to *amici*'s suggestion, the program accessibility requirement can be satisfied—like the constitutional requirements *amici* discusses—by "provid[ing] alternative means by which [disabled] citizens can attend legal proceedings." Ala. Br. 15-16. The relevant regulations offer an array of means states can take, short of physical alterations to their facilities, to comply with the statute. See 28 C.F.R. § 35.150(b).[16] These alternatives to physical alteration specifically include such relatively simple actions as "reassignment of services to accessible buildings," "delivery of services at alternate accessible sites," the use of aides to provide services to individuals who cannot obtain physical access to the places where those services are offered, and "any other methods that result in making [the state's] services, programs, or activities readily accessible to and usable by individuals with disabilities." *Id.* § 35.150(b)(1). In no event is a state required to make any change—to physical structures or otherwise—that would effect a fundamental alteration, impose an undue burden, or threaten historic preservation interests. See 28 C.F.R. § 35.150(a)(2) & (3).

Where, as here, existing facilities were insufficient to provide access at the time Title II became effective, the ADA's imposition of its program accessibility requirement did effectively compel states to make structural changes to their facilities. But even in such circumstances, the law offered states a fair amount of leeway. Not only could states invoke the fundamental alteration and undue burden defenses, see *id.* § 35.150(a)(2); they also enjoyed a substantial grace

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[16] Title II imposes a strict requirement of accessibility only on facilities that were the subject of new construction after the ADA's effective date. See 28 C.F.R. § 35.151(a). That requirement, too, is proportional given the minimal costs involved in incorporating accessibility features in new construction. See 1 Leg. Hist., *supra*, at 187 (Senate comm. report).

period of three years from the statute's effective date (four and a half years from the statute's enactment) in which to make the required modifications. See *id.* § 35.150(c). Title II's requirement that court systems be accessible thus targets precisely the sort of conduct that is likely to violate constitutional rights, while carefully limiting the scope of any intrusion on state prerogatives.

3. The state and its *amici* suggest that Congress must do more than show that the substantive program accessibility requirement satisfies the congruence and proportionality test. In their view, Congress must make an independent showing that the imposition of a damages remedy was congruent and proportional. See Pet. Br. 33-34; Ala. Br. 5-6, 25-26. *Amici* go so far as to ask this Court to second-guess Congress's policy judgment that damages are an effective way of achieving compliance with Title II's requirements. See Ala. Br. 5, 25 (arguing that "private damages actions to enforce the federal guarantee would more likely undermine than advance the ADA's goals" and are accordingly "not the optimal means" of implementing the statute). The state and its *amici* profoundly misapprehend the law.

The "congruence and proportionality" test is a means of determining whether Congress has exceeded its remedial power and instead sought "to decree the *substance* of the Fourteenth Amendment's restrictions on the States." *City of Boerne*, 521 U.S. at 519-20 (emphasis added). It does not limit Congress's unquestioned power to determine the *remedies* for violation of an otherwise constitutional law. Where the substantive obligations Congress has imposed on the states satisfy the congruence and proportionality test, nothing in Section 5 demands an additional showing to justify a damages remedy to enforce those obligations. Nor does anything in the Eleventh Amendment demand such a showing. This Court's decision in *Fitzpatrick* v. *Bitzer*, 427 U.S. 445 (1976), makes clear that, so long as Congress has Section 5 power to impose a given substantive rule on the states, the Eleventh Amendment does not limit the power of

Congress to impose any remedy, damages or otherwise, for a violation of that rule. See *id.* at 456 (Eleventh Amendment no obstacle "[w]hen Congress acts pursuant to § 5").

These points hold particularly true where the remedy authorized by Congress consists merely of compensatory damages. Damages are "a traditional form of compensation for invasion of a legally protected interest." *Bivens* v. *Six Unknown Named Agents of Fed. Bur. of Narcotics*, 403 U.S. 388, 408 (1971) (Harlan, J., concurring). Indeed, compensatory damages are generally *presumed* to be available when Congress authorizes a right of action without specifying the remedy. See *Barnes* v. *Gorman*, 536 U.S. 181, 189 (2002); *Franklin* v. *Gwinnett County Pub. Schs.*, 503 U.S. 60, 66-71 (1992). And for many Title II plaintiffs, any claim for injunctive relief is moot; "it is damages or nothing." *Bivens*, 403 U.S. at 410 (Harlan, J., concurring).[17] Having properly adopted a substantive rule of law to enforce the Fourteenth Amendment, Congress was surely entitled to authorize the most basic of damages remedies for violating that rule. That is particularly true here, where prior enactments had failed to achieve the constitutionally demanded access, and Congress could reasonably believe that only damages and not a mere prospective injunctive remedy would provide the necessary incentive for states to comply. See *Owen* v. *City of Independence*, 445 U.S. 622, 651-52 (1980) (noting deterrent function of damages). The State of Tennessee's own conduct in this case—mouthing support for the ADA while at the same time failing even to come up with the required self-evaluation and transition plan as a necessary first step to compliance—provides powerful testimony to the

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[17] For example, an individual might be excluded from a particular court proceeding that is of great importance to his life but have no interest in ever attending another court proceeding in the future; once the initial proceeding is concluded, that individual may well lack standing to seek purely prospective relief. See *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 564 (1992).

need for a damages remedy in this context. Both Title II's program accessibility requirement and the damages remedy attached to it thus represent proper exercises of Congress's Section 5 authority to enforce disabled citizens' constitutional rights to accessible court proceedings.

II. Title II As A Whole Reasonably Responds To The History And Threat Of Unconstitutional Exclusion Of Citizens With Disabilities From A Wide Range Of State Activities

The courthouse access context offers a particularly important example of the widespread exclusion of people with disabilities from civic life and political participation. But it is far from the only example. As the ADA's statutory findings and the supporting record before Congress demonstrated, people with disabilities have frequently been excluded from the opportunity to participate in an array of state activities. In many of these areas, the exclusion has operated to deny people with disabilities rights secured by constitutional provisions that impose far more than a rational-basis obligation on states. Considered in the aggregate, this widespread exclusion of people with disabilities from state institutions and services has effectively created a second class of citizens who lack the full and equal opportunity to participate in civic life. Title II's general requirements are directly aimed at eliminating that second-class status. Although the Court need look no further than the courthouse access context to decide this case, Title II is proper Section 5 legislation even when considered as a whole.

A. Because Congress Had Power To Mandate Accessible State Court Systems, The Court Need Not Consider Whether Title II May Be Upheld More Broadly

As we showed in Part I of this brief, Congress plainly had Section 5 power to impose on states the Title II requirements at issue in this case—specifically, the requirement that state court systems, viewed in their entirety, be accessible to individuals with disabilities. Like the court

of appeals, this Court need go no further to uphold the statute as applied here. See *Salinas*, 522 U.S. at 60-61 (rejecting defendant's argument that 18 U.S.C. § 666(a)(1)(B) exceeded Congress's spending power because "[w]hatever might be said about § 666(a)(1)(B)'s application in other cases, the application of § 666(a)(1)(B) to Salinas did not extend federal power beyond its proper bounds").[18]

The state suggests that it is not enough that Congress plainly intended and had the Section 5 power to regulate state conduct like that alleged in the complaint. In the state's view, the Court should hold that Title II is incongruent and disproportional because Congress also sought to reach other state conduct, not at issue in this case, that assertedly lies outside of the legislature's Section 5 authority. See Pet. Br. 29-30 (discussing Title II's application to "parking space

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[18] The court of appeals properly focused on the courthouse access context of this case in affirming the denial of the state's motion to dismiss. Pet. App. 3-5. But by stating that Title II could be upheld only to the extent that it enforced the Due Process Clause, *id.* 3—and suggesting that the district court on remand could consider only due process and not equal protection bases for the statute, *id.* 5—the discussion in the court's opinion was unduly formalistic. As *Hibbs*, 123 S. Ct. at 1982, makes clear, the crucial dividing line for Section 5 purposes is not between due process and equal protection but between state conduct that triggers heightened constitutional obligations and state conduct that implicates ordinary rational-basis scrutiny. We take the court of appeals' references to "due process" and "equal protection" as recognizing that, after *Garrett*, Title II cannot be justified simply as enforcing ordinary protected-class-based equal protection guarantees. But there is no reason to believe that a similar analysis applies to other aspects of equal protection law such as the fundamental rights doctrine, which were not at issue, and therefore not affected by the discussion of equal protection scrutiny, in *Garrett*. Indeed, this Court has noted that in the access-to-courts context "[d]ue process and equal protection principles converge." *M.L.B.*, 519 U.S. at 120 (internal quotation marks omitted).

availability at museums," "concert seating priorities at state performing arts centers," "recreational offerings at state parks," and "configuration of bathroom stalls at highway rest areas"). That analysis misapprehends the governing law.

Under this Court's precedents, a statute should be sustained so long as Congress had the power to reach the particular factual context before the Court. The Court has emphasized that a "facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States* v. *Salerno*, 481 U.S. 739, 745 (1987); see also *Hibbs*, 123 S. Ct. at 1986 (Scalia, J., dissenting) (arguing that the *Salerno* "no set of circumstances" test governs states' claims that statutes facially exceed Congress's Section 5 authority). The state's own *amici* agree that principles of "constitutional avoidance and separation of powers" dictate a focus on the courthouse access context of this case. Ala. Br. 10.

Although it has not expressly confronted the issue in any of its post-*Boerne* cases,[19] this Court has previously

[19] None of the post-*Boerne* cases has called on the Court to address the question whether a Section 5 statute may be upheld as applied to a case Congress had the power and intended to reach, even if other applications of the statute would exceed the legislature's enforcement power. The Court came closest to confronting the issue in *Florida Prepaid Postsecondary Education Expense Board* v. *College Savings Bank*, 527 U.S. 627 (1999). There, the Court supported its conclusion that the Patent Remedy Act lacked congruence and proportionality by noting that the statute did not require a showing of intent to infringe the plaintiff's patent, see *id.* at 645, although the case before the Court involved an allegation of intentional deprivation, see *id.* at 653-54 (Stevens, J., dissenting). The majority opinion did not expressly address Justice Stevens's argument for an as-applied analysis, but it did note that intentional infringement of patents by a state could not violate the Due Process Clause unless "the State provides no remedy, or only inadequate remedies, to injured patent owners" and that "the State of Florida provides remedies to patent owners for alleged infringement on the part of the State." *Florida Prepaid*, 527 U.S. at 642-44 & n.9. Accordingly, there was no plausible argument that Congress had Section 5 power to apply the Patent Remedy Act to the facts of the case before the Court.

applied these principles in resolving the very type of question presented here: Whether Congress had exceeded its authority to enforce the Reconstruction Amendments. The leading example is *United States* v. *Raines*, *supra*. *Raines* involved the Civil Rights Act of 1957, which authorized the United States to bring an injunctive action against "any person" who interfered with protected voting rights. 42 U.S.C. § 1971(c). The federal government had brought such an action against state election officials, who argued that the statute exceeded Congress's authority to enforce the Fifteenth Amendment. The lower court read the statute's "any person" language as "allow[ing] the United States to enjoin purely private action designed to deprive citizens of the right to vote on account of race or color." *Raines*, 362 U.S. at 20. And it concluded that the statute, as so construed, extended beyond Congress's Fifteenth Amendment power because it exceeded that Amendment's limitation to state action. See *id.* This Court reversed: "if the complaint here called for an application of the statute clearly constitutional under the Fifteenth Amendment, that should have been an end to the question of constitutionality." *Id.* at 24-25. Because the complaint alleged conduct Congress clearly had power to reach—race discrimination by state actors—the lower court should "have gone no further and should have upheld the Act as applied in the present action." *Id.* at 26. See also *Griffin*, 403 U.S. at 104, 107 (upholding 42 U.S.C. § 1985(3) on the facts before the Court, even though the statute's terms might extend to private conspiracies that lie beyond Congress's power to regulate, because the Court's inquiry "need go only to

identifying a source of congressional power to reach the private conspiracy alleged by the complaint in this case").

This case is in an identical posture. Congress's authority to enforce the array of Fourteenth Amendment rights threatened by an inaccessible court system plainly constitutes "a source of congressional power to reach the [facts] alleged by the complaint in this case." *Griffin*, 403 U.S. at 104. Whether or not the state's conduct actually violated the constitutional rights of the plaintiffs here,[20] Congress had the prophylactic authority to require that Tennessee make its courthouses accessible. Because "the complaint here called for an application of the statute clearly constitutional under the [Fourteenth] Amendment," that should be the "end to the question of constitutionality." *Raines*, 362 U.S. at 24-25. The Court need not consider whether Congress had power to extend Title II outside of the courthouse access context.

Indeed, as the state's own *amici* suggest, the variety of applications of Title II almost compels such a context-specific inquiry into the Section 5 basis for the statute. Title II applies to an array of "qualitatively different" state activities. Ala. Br. 7. The constitutional predicate for the statute is likely to vary widely across those different activities. Cf. *United States* v. *Nat'l Treasury Employees Union*, 513 U.S. 454, 478 (1995) (*NTEU*) (refusing in First Amendment case brought by lower-level executive branch employees to consider constitutionality of the statutory honoraria ban as it would apply to senior executive branch officials, because such an application would "presen[t] a different constitutional question than the one we decide today"). Application of Title

[20] To the extent that the court of appeals' opinion may be read as suggesting that the as-applied validity of Title II turns on a fact-specific inquiry into whether the plaintiffs' own constitutional rights were violated, see Pet. App. 5, such a suggestion is inconsistent with this Court's recognition of Congress's prophylactic power. See *Hibbs*, 123 S. Ct. at 1983.

II to demand courthouse access, we have shown, implicates an array of rights guaranteed by the Bill of Rights and the Fourteenth Amendment's Equal Protection and Due Process Clauses. As we demonstrate *infra*, the statute's application to areas of state conduct such as voting, unnecessary institutionalization, and the treatment of prisoners with disabilities raises quite distinct sets of constitutional issues.

Not only will the underlying constitutional principles differ in each of these contexts, but the actual substantive obligations imposed by the statute are likely to differ as well. While demands for accessible courthouses and polling places would invoke the "program accessibility" regulation, 28 C.F.R. § 35.150, a demand for accommodation to a prisoner's medical needs would invoke the "reasonable modifications" regulation, *id.* § 35.130(b)(7) (requiring "reasonable modifications in policies, practices, or procedures" except when such modifications "fundamentally alter the nature of the service, program, or activity"), and a demand for freedom from unnecessary institutionalization would invoke the "integration" regulation, *id.* § 35.130(d) ("A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."). A doctrine that sought in one fell swoop to resolve all of the issues raised by these diverse applications would be nonsensical and is not required by this Court's Section 5 precedents—none of which involved a statute that, like Title II, implicated such different statutory and constitutional questions in its different applications.

Where, as here, application of Title II involves a state activity in which the statute permissibly responds to a realistic threat of constitutional violations on a documented record, it should make no difference that *other* applications of the statutory language might extend beyond the sweep of Congress's enforcement power.[21] Because the strong

[21] It is irrelevant that Title II's operative section is a textually unitary provision that applies equally to any "public entity" without

predicate of past and threatened constitutional violations in the courthouse context plainly gave Congress power to reach state action like that alleged in this case, and Congress plainly intended to reach such action, the state may not challenge Title II as it might apply to other conduct not at issue here.

B. Title II Responds To A Widespread Record Of Actual And Threatened Constitutional Violations

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distinguishing among different public entities. 42 U.S.C. § 12132; cf. *Wessel* v. *Glendening*, 306 F.3d 203, 208 (4th Cir. 2002) (concluding that "absent judicial redrafting of the statute, there is no narrower constitutional question to address" than the Section 5 basis for Title II as a whole). Contrary to the Fourth Circuit's analysis in *Wessel*, "this Court has on several occasions declared a statute invalid as to a particular application without striking the entire provision that appears to encompass it." *NTEU*, 513 U.S. at 487 (O'Connor, J., concurring in the judgment in part and dissenting in part). For examples of cases other than *Raines*, *supra*, and *Griffin*, *supra*, in which the Court has limited its constitutional analysis to particular applications of undifferentiated statutory language, see *Garrett*, 531 U.S. at 368-69 (limiting Section 5 analysis to ADA Title I's application to state as opposed to local governments, even though Title I by its terms applies equally to all "governments, governmental agencies, [and] political subdivisions," 42 U.S.C. § 2000e(a) (incorporated by reference in 42 U.S.C. § 12111(2), (5), (7))); *id.* at 360 n.1 (holding ADA's abrogation provision unconstitutional only as it applied to Title I, even though that provision appears in a single section of the statute, 42 U.S.C. § 12202, that applies to all titles of the ADA in an undifferentiated manner); *Salinas*, 522 U.S. at 60-61 (upholding 18 U.S.C. § 666(a)(1)(B) at least as applied to cases in which bribes threaten "the integrity and proper operation of the federal program," although the statutory text contained no such limitation); *NTEU*, 513 U.S. at 477-78 (holding statutory honoraria ban invalid only as applied to "Executive Branch employees below grade GS-16," although the relevant statute applied in an undifferentiated manner to any "Member, officer, or employee" of the federal government).

Should the Court go further and consider Title II as a whole, it should conclude that the statute is proper Section 5 legislation. ADA Title II is fundamentally unlike the statute's Title I—which the *Garrett* Court held not to validly abrogate state sovereign immunity. Title I adopted a general rule of nondiscrimination in employment, based almost entirely on evidence of discrimination in the *private* sector. Because the Constitution prohibits employment discrimination against people with disabilities only when that discrimination takes the form of irrational state action, and Congress adduced virtually no record of such discrimination in *public sector* employment, the Court held that Congress lacked Section 5 power to apply the statutory nondiscrimination rule to states. See *Garrett*, 531 U.S. at 365-72.

But Title II is specifically directed at governmental conduct, and it is supported by extensive findings of governmental discrimination in such important nonemployment areas as "education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services." 42 U.S.C. § 12101(a)(3). As this Court noted in *Garrett*, the "overwhelming majority" of incidents of potentially unconstitutional state conduct discussed in the ADA's legislative history involved not employment discrimination but the discrimination in public services that is addressed by Title II of the statute. *Garrett*, 531 U.S. at 371 n.7.[22] In many areas of state government, the uniquely governmental discrimination attacked by Title II threatens constitutional rights secured by doctrines that impose far more than rational

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[22] The Court suggested that the record of state constitutional violations might also have related to matters covered by Title III, the ADA's public accommodations title. See *Garrett*, 531 U.S. at 371 n.7. But Title III by its terms covers only "private entities." 42 U.S.C. § 12181(7). To the extent that states violate the constitutional rights of individuals with disabilities outside of the employment context, it is Title II that addresses those violations.

basis scrutiny on states. Unlike in the employment context, there is often "confirming judicial documentation" of the pattern of unconstitutionality in the areas covered by Title II, in the form of "extensive litigation and discussion of the constitutional violations" in judicial opinions. *Id.* at 376 (Kennedy, J., concurring); see generally Br. for the United States, *Med. Br. of California* v. *Hason*, No. 02-479, at 1a-8a (listing more than 60 "[c]ases [e]videncing [u]nconstitutional [t]reatment of [i]ndividuals with [d]isabilities"). That extensive record of state discrimination fully justifies Title II as remedial and prophylactic legislation. See *Hibbs*, 123 S. Ct. at 1981-83.

But the constitutional problem addressed by Title II goes beyond even the discrete categories of state action that in and of themselves implicate heightened constitutional obligations. The exclusion of a specific class of persons from a wide range of state activities creates a constitutional harm that is greater than the sum of its individual parts. The statutory findings state that people with disabilities have experienced discrimination in an array of government activities, 42 U.S.C. § 12101(a)(3)—discrimination that has "relegated people with disabilities to a position of political powerlessness in our society," *id.* § 12101(a)(7). Although not all of the state practices that exclude people with disabilities from specific public services trigger heightened scrutiny, the aggregate impact of that exclusion raises independent constitutional concerns, for it imposes "general hardships" on "a certain class of citizens." *Romer*, 517 U.S. at 633. As such, it effectively relegates people with disabilities to a second class of citizenship—a result that is abhorrent to the Fourteenth Amendment. See *id.* at 623; *Saenz*, 526 U.S. at 506-07.

The number of specific contexts in which the conduct addressed by Title II implicates heightened constitutional scrutiny is nonetheless significant. States' denial of disabled citizens' core rights of democratic participation, for example, has extended far beyond the problem of inaccessible

courthouses. As the statutory findings explicitly noted, see 42 U.S.C. § 12101(a)(3), states have frequently denied individuals with disabilities their fundamental right to vote. See *Reynolds*, 377 U.S. at 561-62 (stating that the right to vote "is a fundamental matter in a free and democratic society" because it is "preservative of other basic civil and political rights"). For people with mental disabilities and others, the problem has been outright exclusion. States have frequently disenfranchised classes of people with disabilities categorically, without engaging in the individualized determination of competence the Constitution requires.[23]

For people with physical disabilities, the denial of the right to vote has more frequently resulted from the denial of a *place* to vote. Just as a voter's wealth "is not germane to one's ability to participate intelligently in the electoral process," *Harper* v. *Bd. of Elections*, 383 U.S. 663, 668 (1966), so too is a voter's ability to climb stairs or overcome other physical obstacles irrelevant to legitimate voting qualifications. Yet, as Congress was well aware when it enacted the ADA, inaccessible polling places remained a

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[23] See *Doe* v. *Rowe*, 156 F. Supp. 2d 35, 51-56 (D. Me. 2001) (state constitutional provision disenfranchising persons under guardianship by reason of mental illness violates Fourteenth Amendment because not narrowly tailored to incompetent voters); *Manhattan State Citizens' Group, Inc.* v. *Bass*, 524 F. Supp. 1270, 1274-75 (S.D.N.Y. 1981) (state statute disenfranchising, *inter alia*, people involuntarily committed to hospitals or mental institutions violates Fourteenth Amendment as applied to those who had not been adjudged incompetent); see also *City of Cleburne* v. *Cleburne Living Center*, 473 U.S. 432, 464 (1985) (Marshall, J., concurring in the judgment in part and dissenting in part) ("As of 1979, most States still categorically disqualified 'idiots' from voting, without regard to individual capacity and with discretion to exclude left in the hands of low-level election officials."); 2 Leg. Hist., supra, at 1220 (Nancy Husted-Jensen) ("[P]eople with disabilities have been turned away from the polling places after they have been registered to vote because they did not look competent").

widespread problem throughout the Nation. See, *e.g.*, 1 Leg. Hist., *supra*, at 110 (Senate committee report); 2 *id.* at 1767 (Rick Edwards); 3 *id.* at 1984 (Laura Cooper); 3 *id.* at 2068 (Stephen Fawcett and Barbara Bradford); May 1989 Hearings, *supra*, at 663 (Mary Lynn Fletcher); 135 CONG. REC. S10793 (1989) (Sen. Biden).[24]

Although removing physical barriers to polling place access might cost money, that fact does not diminish the unconstitutionality of denying a wide class of people with disabilities an effective franchise because they have no place to vote. Poll taxes, for example, may be a source of revenue that finances elections, see *Harper*, 383 U.S. at 674 (Black, J., dissenting), but states may not condition the franchise on the payment of those taxes, for the ability to pay one's way is irrelevant to legitimate voting qualifications. See *Harper*, 383 U.S. at 668. Cf. *Bullock* v. *Carter*, 405 U.S. 134, 147-48 (1972) (though candidate filing fees "serve to relieve the State treasury of the cost of conducting the primary elections," candidates may not be excluded on the basis of inability to pay such a fee, because "legitimate costs of the democratic process" should be borne by "the taxpayers generally"). To deny an individual with a disability the opportunity to vote because of the cost of retrofitting polling places built in an inaccessible manner similarly "introduce[s] a capricious or irrelevant factor" into the democratic process. *Harper*, 383 U.S. at 668. Yet that is precisely what states were doing throughout the Nation at the time the ADA was enacted.

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[24] Congress was also aware that the opportunity to cast an absentee ballot was no solution to this problem. Because absentee ballots typically must be cast well in advance of election day, an absentee option does nothing for the individual who discovers for the first time when he goes to vote that his polling place is inaccessible. It also requires an individual with a disability to cast a ballot before the candidates have had a full opportunity to make their case to the voters. See 1 Leg. Hist., *supra*, at 110 (Senate committee report).

In addition to being denied the right to vote, many people with disabilities have also been denied the opportunity "to seek aid from the government," *Romer*, 517 U.S. at 633, because they have been unable to obtain access to government buildings and offices. See U.S. Comm'n on Civil Rights, *supra*, at 39 (76% of state buildings inaccessible). The ADA's legislative history contains numerous examples of individuals who could not attend important government proceedings, file claims in government offices, or meet with their elected representatives due to the inaccessibility of state facilities. See May 1989 Hearings, *supra*, at 488 (Neil Hartigan); *id.* at 663 (Mary Lynn Fletcher). This broad denial of access to a large class of citizens with disabilities threatens both the right to equal protection of the laws articulated in *Romer* and the First Amendment right to "to petition the Government for redress of grievances." 517 U.S. at 633-34.

People with disabilities have also frequently been denied important educational opportunities. "[E]ducation has a fundamental role in the fabric of our society," and "denial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit." *Plyler* v. *Doe*, 457 U.S. 202, 221-22 (1982). To be sure, education is not a "fundamental right" such that a state must "justify by compelling necessity every variation in the manner in which education is provided to its population." *Id.* at 223 (citing *San Antonio Indep. Sch. Dist.* v. *Rodriguez*, 411 U.S. 1, 28-39 (1973)). But when outright exclusion from educational opportunities "imposes a lifetime hardship on a discrete class of children not accountable for that disabling status," *id.*, it is judged against a heightened constitutional standard. See *id.* at 224 (such exclusion "can hardly be considered rational unless it furthers some substantial"—and not merely legitimate—"goal of the State").

Title II responded to precisely that sort of exclusion. Congress expressly found that before the enactment of the

Education for All Handicapped Children Act (EAHCA) in 1975, "1,000,000 of the children with disabilities in the United States were excluded entirely from the public school system." 20 U.S.C. § 1400(c)(2)(C). Yet the EAHCA did not solve the problem. In 1983, the Civil Rights Commission concluded that "[a]lmost a decade after the enactment of this law, a great many handicapped children continue to be excluded from the public schools." U.S. Comm'n on Civil Rights, *supra*, at 28. And a House committee report on the ADA, quoting then-President Bush, reaffirmed that, 15 years after enactment of the EAHCA, people with disabilities remained "the poorest, least educated, and largest minority in America." 1 Leg. Hist., *supra*, at 107.

People with disabilities have also frequently been denied another set of fundamental rights protected by the Equal Protection and Due Process Clauses—the rights to marry and to have and raise children.[25] Beginning in the eugenics era, many states engaged in a widespread practice of sterilizing individuals with disabilities. See U.S. Comm'n on Civil Rights, *supra*, at 36-37. That practice, "although steadily dwindling," was far from a thing of the past at the time the ADA was adopted. *Id.* at 37. The Civil Rights Commission found that "involuntary sterilizations of

[25] See, *e.g.*, *Troxel* v. *Granville*, 530 U.S. 57, 66 (2000) (plurality opinion of O'Connor, J.) ("[I]t cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."); *id.* at 77 (Souter, J., concurring in the judgment) (endorsing that principle); *Zablocki* v. *Redhail*, 434 U.S. 374, 383 (1978) (restrictions on right to marry subject to heightened scrutiny under Equal Protection Clause); *Stanley* v. *Illinois*, 405 U.S. 645, 649 (1972) (Due Process and Equal Protection Clauses require individualized determination of parental unfitness before depriving unwed father of custody of his children); *Skinner* v. *Oklahoma*, 316 U.S. 535, 541-42 (1942) (state sterilization statute for habitual criminals triggers, and fails, "strict scrutiny" under Equal Protection Clause).

handicapped persons, both pursuant to State statutes and in the absence of statutory authority, continue to be performed." In 1983, 15 states still had statutes authorizing compulsory sterilization of people with mental disabilities and 4 states still had statutes authorizing compulsory sterilization of people with epilepsy. *Id.* Of no less constitutional importance, the Commission found that "[m]any States restrict the rights of physically and mentally handicapped people to marry," and that people with disabilities have "had custody of their children challenged in proceedings to terminate parental rights and in proceedings growing out of divorce." *Id.* at 40 (footnotes omitted). And Congress heard testimony that "child-custody suits almost always have ended with custody being awarded to the non-disabled parent." 2 Leg. Hist., *supra*, at 1611 n.10 (Arlene Mayerson).

Yet another significant way in which states have long denied people with disabilities the full rights of citizenship is by the practice of unnecessary institutionalization. See *Olmstead*, 527 U.S. at 600. Unnecessary institutionalization threatens the due process right to freedom from unnecessary restraint, see *Youngberg* v. *Romeo*, 457 U.S. 307, 324 (1982), and was a widespread problem at the time Title II was enacted. The ADA's statutory findings state that segregation of individuals with disabilities is "a serious and pervasive social problem" and that discrimination "persists in such critical areas as . . . institutionalization." 42 U.S.C. § 12101(a)(2), (3). Supporting those findings, the Civil Rights Commission's report described "the systematic placement of handicapped people in substandard residential facilities"; noted the evolving professional consensus that "most training, treatment, and habilitation services can be better provided to handicapped people in small, community-based facilities"; yet concluded that "a great many handicapped persons remain in segregative facilities." U.S. Comm'n on Civil Rights, *supra*, at 32-35.

Finally, the record before Congress demonstrated that people with disabilities had frequently been denied rights

guaranteed by the Fourth, Fifth, and Eighth Amendments in dealings with law enforcement. The House Judiciary Report on the ADA observed that "persons who have epilepsy, and a variety of other disabilities, are frequently inappropriately arrested and jailed" and often "deprived of medications while in jail." 1 Leg. Hist., *supra*, at 490. The legislative history also contains examples of people abused by police officers because of their disabilities. See, *e.g.*, 2 *id.* at 1196-1197 (Cynthia Miller). And a large body of case law found violations of disabled prisoners' Eighth Amendment right to accommodation of their medical needs.[26]

C. Title II Is A Proportional Response To This Widespread Pattern Of Unconstitutional Exclusion

Given the extent of unconstitutional exclusion of people with disabilities from important civic and governmental activities, Title II's requirements are clearly "responsive to, or designed to prevent, unconstitutional behavior." *City of Boerne*, 521 U.S. at 532. Just as in *Hibbs*, 123 S. Ct. at 1981-82, Congress responded to discriminatory state practices that trigger heightened constitutional scrutiny. And Congress has done so in a measured way, by prohibiting

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[26] See, *e.g.*, *Weeks* v. *Chaboudy*, 984 F.2d 185, 187 (6th Cir. 1993) (denial of wheelchair to inmate with paralysis, resulting in inmate's inability to shower himself or leave his cell, violated Eighth Amendment); *Beckford* v. *Irvin*, 49 F. Supp. 2d 170, 180 (W.D.N.Y. 1999) (Eighth Amendment violation existed where plaintiff "was regularly deprived use of his wheelchair for extended periods of time, plaintiff was unable to shower, and . . . he was not allowed to use a cup in order to try to bathe by taking water out of his cell toilet or drinking fountain"); *Clarkson* v. *Coughlin*, 898 F. Supp. 1019, 1043 (S.D.N.Y. 1995) (denial of interpretive services and assistive devices to deaf inmates during medical treatment violated Eighth Amendment where "communication between the patient and medical personnel [was] essential to the treatment in question"); *Casey* v. *Lewis*, 834 F. Supp. 1569, 1582 (D. Ariz. 1993) (failure to provide accessible bathrooms, showers, and cells violated Eighth Amendment).

discrimination only when it is targeted at "*qualified* individual[s] with a disability," 42 U.S.C. § 12132 (emphasis added), and by requiring modifications of existing practices only when those modifications are "reasonable," *id.* § 12131, and would not "fundamentally alter" the state's programs, 28 C.F.R. § 35.130(b)(7).

In many contexts addressed by Title II, the statute's coverage overlaps substantially with the requirements of the Constitution. In those cases in which the statute forbids irrational discrimination, see *City of Cleburne*, 473 U.S., at 450, or discrimination that affects a fundamental right such as the right to vote, Title II goes no further than the Constitution. Even the requirement of reasonable modifications goes no further than does the Constitution in the many areas of state government in which the Constitution itself imposes a requirement of individualized accommodation. See, *e.g.*, *Youngberg*, 457 U.S. at 321, 324 (Due Process Clause requires individualized professional judgment in decisions to restrain individuals with disabilities); *Stanley*, 405 U.S. at 649 (Due Process Clause requires individualized inquiry into parent's fitness); *LaFaut* v. *Smith*, 834 F.2d 389, 394 (4th Cir. 1987) (Powell, J., sitting by designation) (Cruel and Unusual Punishments Clause requires individualized accommodation of prisoner's medical needs); *Doe*, 156 F. Supp. 2d at 51-56 (Equal Protection Clause requires individualized determination of voting competency).

To be sure, not all applications of Title II involve state conduct that in and of itself violates the Constitution. But Congress had ample reason to believe that it was necessary here to "proscribe[] facially constitutional conduct in order to prevent and deter unconstitutional conduct." *Hibbs*, 123 S. Ct. at 1977. As we have shown, the cumulative impact of exclusion from an array of government activities creates an independent constitutional harm of second-class citizenship, even if none of the component parts of that exclusion would, considered in isolation, violate the Constitution. See p. 42, *supra*. Moreover, as the Civil Rights Commission concluded

in its report that spurred the drafting and consideration of the ADA, "[d]iscrimination in some areas tends to foster discrimination in other areas." U.S. Comm'n on Civil Rights, *supra*, at 42. When broad-scale discrimination operates to exclude people with disabilities from a range of important opportunities in the community, that exclusion feeds the societal prejudice and stereotyping that leads to further discrimination. See *id.* at 21-22; see also *Olmstead*, 527 U.S. at 600 (explaining how unnecessary institutionalization feeds societal stereotypes and prejudice in this way). Just as in the medical leave context, Congress had ample reason to believe that these "mutually reinforcing stereotypes created a self-fulfilling cycle of discrimination," *Hibbs*, 123 S. Ct. at 1982, that could not be stopped with piecemeal efforts. Cf. *id.* at 1979 n.5 (evidence of state discrimination in *parenting* leave policies justified prophylactic statute mandating *family caretaking* leave because policies regarding both forms of leave "implicate the same stereotypes").

In its exercise of remedial power "to eliminate so far as possible the discriminatory effects of the past and to bar like discrimination in the future," *United States* v. *Virginia*, 518 U.S. 515, 547 (1996), Congress had authority to attack all of the forms of state discrimination that contributed to that self-fulfilling cycle, even if not all of the targeted acts of discrimination themselves would violate the Constitution. The need for a broad remedy was amply demonstrated by the failure of numerous earlier enactments, see *Garrett*, 531 U.S. at 390-91 (Breyer, J., dissenting) (listing pre-ADA disability discrimination laws), to stanch the widespread violations of disabled citizens' constitutional rights. See *Hibbs*, 123 S. Ct. at 1982 (failure of prior legislation justifies "added prophylactic measures"). Title II, considered as a whole, is clearly a proportional response to that "difficult and intractable problem." *Id.* (internal alterations omitted).

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

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APPENDIX

Appendix

Courthouse Access Enforcement by the Department of Justice

(source: *http://www.usdoj.gov/crt/ada/enforce.htm*)

Alabama

- *Physical accessibility, Robertsdale Municipal Court (Oct. 31, 2001, Settlement:* http://www.usdoj.gov/crt/ada/roberal.htm*)*
- *Physical accessibility, Georgiana Magistrate's Court (Formal Settlement, April-June 1999 Status Report)*

Arizona

- Physical accessibility, Flagstaff Municipal Court (June 25, 2002, Settlement: *http://www.usdoj.gov/crt/ada/flagstaf.htm*)
- Physical accessibility, unidentified county court house (Informal Settlement, April-June 2002 Status Report)
- Communications accessibility, unidentified state court (Informal Settlement, Oct.-Dec. 1997 Status Report)

Arkansas

- Services on inaccessible third floor, unidentified county court house (Mediation, Oct.-Dec. 2001 Status Report)
- Physical accessibility, Chicot County Courthouse (Formal Settlement, Jan.-March 1998 Status Report)

- Inaccessible site, Van Buren County Courthouse (Formal Settlement, April 1994 Status Report)
- Physical accessibility, Scott County Courthouse (Formal Settlement, April 1994 Status Report)

California

- Physical accessibility, unidentified county court (Informal Settlement, July-Sept. 2001 Status Report)
- Physical accessibility, Mendocino County Courthouse (Formal Settlement, July-Sept. 1998 Status Report)
- Communications accessibility, unidentified county court (Informal Settlement, April-June 1997 Status Report)
- Communications accessibility, Santa Clara County Superior Court (Formal Settlement, Oct.-Dec. 1996 Status Report)
- Communications accessibility, unidentified Municipal Court (Informal Settlement, July-Sept. 1996 Status Report)

Colorado

- Physical accessibility, Saguache County Courthouse (Formal Settlement, Oct.-Dec. 2001 Status Report)
- Physical accessibility, Boulder County Municipal Courthouse (Oct. 2, 2000, Settlement: *http://www.usdoj.gov/crt/ada/boulderc.htm*)
- Accessible parking, unidentified county court (Informal Settlement, July-Sept. 1999 Status Report)

- Communications accessibility, unidentified judicial district (Informal Settlement, Jan.-March 1997 Status Report)
- Physical accessibility, unidentified county courthouse (Informal Settlement, July-Sept. 1994 Status Report)
- Physical accessibility, unidentified county courthouse (Informal Settlement, Apr.-June 1994 Status Report)

Connecticut

- Physical and communications accessibility in courtroom, Windham, CT (July 19, 2000, Settlement: *http://www.usdoj.gov/crt/ada/windhact.htm*)

Florida

- Physical and communications accessibility, Citrus County Courthouse (Formal Settlement, Apr.-June 1998 Status Report)
- Physical accessibility, unidentified county courthouse (Informal Settlement, July-Sept. 1997 Status Report)
- Communications accessibility, Florida state courts (Formal Settlement, Apr.-June 1996 Status Report)
- Physical accessibility, Madison County Courthouse (Formal Settlement, Apr. 1994 Status Report)
- Communications accessibility, Sixth Judicial District (Formal Settlement, Apr. 1994 Status Report)

Georgia

- Inaccessible restrooms, Chatham County Courthouse (Jan. 30, 2002, Settlement: *http://www.usdoj.gov/crt/ada/savannah.htm*)
- Physical accessibility, Ben Hill County Courthouse (Formal Settlement, Apr.-June 2001 Status Report)

Hawaii

- Communications accessibility, Hawaii state courts (Formal Settlement, Oct.-Dec. 1998 Status Report)

Idaho

- Communications accessibility, Fifth Judicial District (Formal Settlement, Oct.-Dec. 1997 Status Report)

Illinois

- Communications accessibility, unidentified county court (Informal Settlement, Oct.-Dec. 2002 Status Report)
- Physical accessibility, Warren County Courthouse (Nov. 26, 2001, Settlement: *http://www.usdoj.gov/crt/ada/warrenil.htm*)
- Communications accessibility, Nineteenth Judicial Circuit (Formal Settlement, July-Sept. 1999 Status Report)

Indiana

- Physical accessibility, unidentified county court (Informal Settlement, Jan.-Mar. 1998 Status Report)

- Communications accessibility, Boone County Courthouse (Formal Settlement, July-Sept. 1997 Status Report)

Iowa

- Communications accessibility, unidentified district court (Informal Settlement, July-Sept. 2001 Status Report)

Kentucky

- Physical accessibility, Perry County Courthouse (Sept. 25, 2001, Settlement: *http://www.usdoj.gov/crt/ada/perryky.htm*)
- Physical accessibility, unidentified county court (Informal Settlement, July-Sept. 1994 Status Report)
- Physical accessibility, Hickman County Courthouse (Formal Settlement, April 1994 Status Report)

Louisiana

- Communications accessibility, unidentified court (Informal Settlement, July-Sept. 2002 Status Report)
- Physical accessibility, New Orleans civil courts and traffic court buildings (Jan. 30, 2002, Settlement: *http://www.usdoj.gov/crt/ada/newola.htm*)
- Physical accessibility, Beauregard Parish Courthouse (Formal Settlement, July-Sept. 1999 Status Report)
- Communications accessibility, Alexandria City Court (Formal Settlement, April-June 1994 Status Report)

Maryland

- Physical accessibility, Worcester County courthouse (July 28, 2003, Settlement: *http://www.usdoj.gov/crt/ada/worceste.htm*)

Massachusetts

- Physical accessibility, Bristol County courts (New Lawsuits, Jan.-Mar. 2003 Status Report)

Michigan

- Communications accessibility, unidentified district court (Informal Settlement, July-Sept. 1999 Status Report)
- Physical accessibility, unidentified juvenile court (Informal Settlement, Oct.-Dec. 1998 Status Report)
- Physical accessibility, unidentified county court (Informal Settlement, Apr.-June 1998 Status Report)
- Communications accessibility, unidentified court (Informal Settlement, Oct.-Dec. 1997 Status Report)
- Communications accessibility, unidentified court (Mediation, July-Sept. 1997 Status Report)
- Physical accessibility, unidentified county court (Informal Settlement, Apr.-June 1997 Status Report)
- Communications accessibility, unidentified county courts (Informal Settlement, Jan.-Mar. 1997 Status Report)

- Inaccessible restrooms, Genesee County probate court (Formal Settlement, Apr.-June 1994 Status Report)
- Communications accessibility, unidentified district court (Informal Settlement, Apr. 1994 Status Report)

Mississippi

- Physical accessibility, various Madison County courts (July 25, 2003, Settlement: *http://www.usdoj.gov/crt/ada/madison.htm*)
- Communications accessibility, unidentified municipal court (Informal Settlement, Jan.-Mar. 2003 Status Report)
- Physical accessibility, unidentified local courthouse (Mediation, Oct.-Dec. 2002 Status Report)
- Communications accessibility, Gulfport Municipal Court (Formal Settlement, Apr.-Sept. 2000 Status Report)
- Exclusion of deaf jurors, Hancock and Harrison County courts (Formal Settlement, Jan.-Mar. 1997 Status Report)

Missouri

- Physical accessibility, unidentified county courthouse (Mediation, Jan.-Mar. 2003 Status Report)
- Physical accessibility, Springfield Municipal Court (Sept. 19, 2001, Settlement: *http://www.usdoj.gov/crt/ada/sprfldmo.htm*)
- Communications accessibility, City of Fulton Municipal Court (Formal Settlement, Apr.-June 1994 Status Report)

- Physical accessibility, unidentified county courthouse (Informal Settlement, Apr. 1994 Status Report)

Nebraska

- Physical accessibility, unidentified county courthouse (Informal Settlement, Jan.-Mar. 2002 Status Report)
- Physical accessibility, unidentified courthouse (Mediation, Jan.-Mar. 2002 Status Report)

New Jersey

- Physical accessibility, Essex County Courthouse (Formal Settlement, Oct.-Dec. 2002 Status Report)
- Physical accessibility, South Orange Village Police Headquarters and Court (Oct. 2, 2000, Settlement: *http://www.usdoj.gov/crt/ada/soorang.htm*)

New Mexico

- Physical and communications accessibility, Santa Fe Municipal Court (Apr. 23, 2001, Settlement: *http://www.usdoj.gov/crt/ada/santafe.htm*)
- Communications accessibility, Roswell Municipal Court (Formal Settlement, Jan.-Mar. 1997 Status Report)

New York

- Physical accessibility, Columbia County Courthouse (May 19, 2003, Settlement: *http://www.usdoj.gov/crt/ada/columbia.htm*)
- Physical accessibility, unidentified town court (Mediation, Oct.-Dec. 2001 Status Report)

- Physical accessibility, Rome City Court (Formal Settlement, Jan.-Mar. 1997 Status Report)
- Communications accessibility, Lloyd Town Justice Court (Formal Settlement, July-Sept. 1996 Status Report)

North Carolina

- Physical access, unidentified trial court (Litigation: Decisions, Oct. 1995-Mar. 1996 Status Report)

North Dakota

- Physical accessibility, Burleigh County Detention Center and Courthouse (Oct. 16, 2002, Settlement: *http://www.usdoj.gov/crt/ada/bismknd.htm*)
- Physical accessibility, Dickinson Municipal Court (Formal Settlement, Jan.-Mar. 1998 Status Report)

Ohio

- Physical accessibility, Lucas County courthouses (Formal Settlement, Jan.-Mar. 2003 Status Report)
- Communications accessibility, unidentified county probate and juvenile court (Informal Settlement, Jan.-Mar. 2003 Status Report)
- Physical accessibility, Guernsey County courthouse (Formal Settlement, Oct.-Dec. 2002 Status Report)
- Communications accessibility, Mason Municipal Court (Formal Settlement, Oct.-Dec. 2002 Status Report)
- Physical and communications accessibility, Warren municipal justice building (Formal Settlement, Apr.-June 2002 Status Report)

- Physical accessibility, Cambridge Municipal Court (Jan. 11, 2001, Settlement: *http://www.usdoj.gov/crt/ada/cambroh.htm*)
- Physical accessibility, unidentified city court (Informal Settlement, Jan.-Mar. 2001 Status Report)
- Physical accessibility, unidentified municipal court (Informal Settlement, Oct.-Dec. 1998 Status Report)
- Physical accessibility, Wadsworth City Court (Formal Settlement, Apr.-June 1994 Status Report)
- Physical accessibility, Paulding County courtroom (Formal Settlement, June 1994 Status Report)

Oklahoma

- Physical accessibility, Adair County Courthouse (Formal Settlement, Jan.-Mar. 2000 Status Report)
- Physical accessibility, unidentified county court (Informal Settlement, Oct.-Dec. 1999 Status Report)
- Physical accessibility, Oklahoma County Courthouse (Formal Settlement, Apr.-June 1999 Status Report)

Oregon

- Physical and communications accessibility, Ashland Municipal Court (Jan. 11, 2001, Settlement: *http://www.usdoj.gov/crt/ada/ashlndor.htm*)

Pennyslvania

- Physical accessibility, unidentified county court (Informal Settlement, Oct.-Dec. 1999 Status Report)
- Physical accessibility, unidentified city court (Informal Settlement, July-Sept. 1999 Status Report)
- Accommodation of jurors with disabilities, Philadelphia Court of Common Pleas (Formal Settlement, Oct.-Dec. 1997 Status Report)
- Physical accessibility, unidentified county court (Informal Settlement, Jan.-Mar. 1995 Status Report)

South Carolina

- Communications accessibility, unidentified county court (Mediation, July-Sept. 2001 Status Report)
- Communications accessibility, Pickens County Court (Formal Settlement, Oct.-Dec. 1994 Status Report)

South Dakota

- Physical accessibility, Butte County Courthouse (2001 Settlement: *http://www.usdoj.gov/crt/ada/buttesd.htm*)

Tennessee

- Physical and communication accessibility, county courthouse, courthouse annex, and justice center in Loudon County (July 25, 2003, Settlement: *http://www.usdoj.gov/crt/ada/loudon.htm*)

- Communications accessibility, Shelby County Court of General Sessions (Formal Settlement, Apr.-Sept. 2000 Status Report)
- Physical accessibility, unidentified courthouse (Mediation, Jan.-Mar. 2000 Status Report)
- Physical accessibility, Van Buren County Courthouse (Formal Settlement, July-Sept. 1998 Status Report)
- Physical accessibility, Johnson County Courthouse (Formal Settlement, July-Sept. 1998 Status Report)
- Communications accessibility, unidentified county circuit court (Informal Settlement, July-Sept. 1997 Status Report)

Texas

- Physical accessibility, San Antonio Municipal Courthouse (Jan. 30, 2002, Settlement: *http://www.usdoj.gov/crt/ada/sananton.htm*)
- Communications accessibility, unidentified county (Informal Settlement, July-Sept. 2001 Status Report)
- Communications accessibility, Houston courts (Formal Settlement, Jan.-Mar. 2000 Status Report)
- Physical accessibility, unidentified county courthouse (Informal Settlement, Oct.-Dec. 1999 Status Report)
- Communications accessibility, unidentified county court (Informal Settlement, July-Sept. 1999 Status Report)
- Physical accessibility, unidentified courthouse (Mediation, Jan.-Mar. 1999 Status Report)
- Physical accessibility, Harris County court facilities (Formal Settlement, Apr. 1994 Status Report)

Utah

- Communications accessibility, courtroom in Logan City Hall (Aug. 31, 2001, Settlement: *http://www.usdoj.gov/crt/ada/loganut.htm*)
- Communications accessibility and exclusion of deaf jurors, district court in Salt Lake City (Formal Settlement, Apr. 1994 Status Report)

Vermont

- Communications accessibility, Windsor County Superior Court (Formal Settlement, Oct.-Dec. 2002 Status Report)

Virginia

- Physical accessibility, Craig County Courthouse (Jan. 30, 2002, Settlement: *http://www.usdoj.gov/crt/ada/craigco.htm*)

Washington

- Physical accessibility, courtroom portions of Mt. Vernon municipal police/justice complex (July 19, 2000, Settlement: *http://www.usdoj.gov/crt/ada/mtvernwa.htm*)

West Virginia

- Physical accessibility, Summers County Courthouse (July 19, 2000, Settlement: *http://www.usdoj.gov/crt/ada/summerwv.htm*)
- Physical accessibility, McDowell County Courthouse (Formal Settlement, July-Sept. 1998 Status Report)

- Physical accessibility, Wetzel County Courthouse (Formal Settlement, Jan.-Mar. 1998 Status Report)
- Physical accessibility, unidentified county court (Informal Settlement, July-Sept. 1996 Status Report)
- Physical accessibility, Mercer County Courthouse (Formal Settlement, Jan.-Mar. 1995 Status Report)

Wisconsin

- Physical accessibility, Outagamie County Justice Center (Formal Settlement, Apr.-June 1997 Status Report)

Wyoming

- Physical accessibility, unidentified county courthouse (Informal Settlement, Jan.-Mar. 1997 Status Report)

Unidentified States

- Communications accessibility, unidentified court (Informal Settlement, Jan.-Mar. 2003 Status Report)
- Communications accessibility, a "New England State court system" (Informal Settlement, Jan.-Mar. 2002 Status Report)
- Communications accessibility, unidentified county superior court (Informal Settlement, Oct.-Dec. 2001 Status Report)
- Communications accessibility, "a southern state" (Informal Settlement, Jan.-Mar. 1997 Status Report)
- Physical accessibility, courthouses in "various cities and towns in the East and Midwest" (Informal Settlement, Apr. 1994 Status Report)